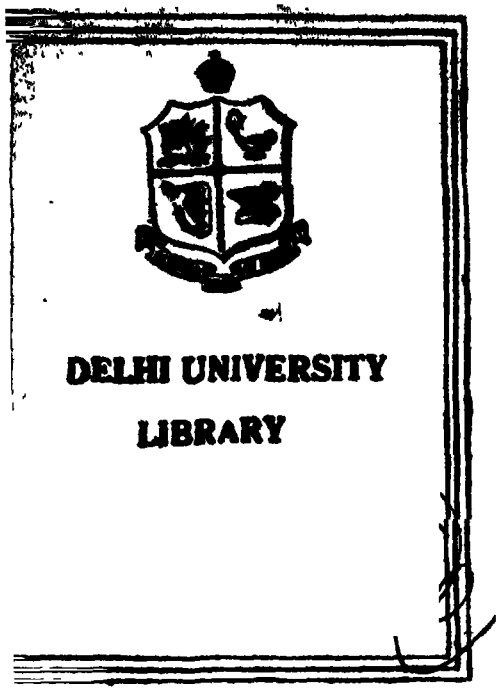

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THE LAW OF INCOME TAX

THE LAW OF
INCOME TAX

A TREATISE DESIGNED FOR

THE USE OF THE TAXPAYER AND HIS ADVISERS

WITH

THE INCOME TAX ACTS APPENDED

TENTH EDITION

BY

E. M. KONSTAM

OF HIS MAJESTY'S COUNSEL

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MATER DILECTISSIMA,
MEMORIAE EJUS
CONFECTUM TANDEM DEDICAVIT
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PREFACE

THERE has been much important income-tax legislation since the ninth edition of this book was published; it is incorporated in the present volume. The Employments Act of 1943, and the Offices and Employments Act of 1944, together with the voluminous Regulations made thereunder, applied the "Pay-as-you-earn" system to all emoluments derived from offices, employments and pensions, other than those connected with the Armed Forces. The Finance Act, 1944, enacted a code for income tax with regard to enemy property, and created a precedent by providing for certain allowances in respect of capital expenditure.

In that Act, the allowances related only to scientific research. But by the Income Tax Act, 1945, allowances were granted—and all will commence as from 6th April, 1946—to industry and agriculture for capital expenditure on buildings and structures, machinery and plant, mines and oilwells, agricultural buildings and works, patents and registration of designs and trade-marks. The objects of this statute are highly beneficent: its subject-matter is indeed far-reaching and complex; but unfortunately its arrangement and language are in the utmost degree tortuous and obscure. I have endeavoured to state its effect (together with that of the 1944 provisions above-mentioned) in a fresh Chapter 7, headed "The New Allowances."

The first Finance Act of 1945 was merely an interim measure; the second contains a variety of new matter. It was not introduced until this volume was largely in print, but the greater number of its amendments are indicated in the relevant places. These include the provisions which close the long

history of litigation between the Inland Revenue and urban authorities with regard to tax upon interest payable by the latter, and that which continues the reduction of tax-free annuities; as well as certain amendments with regard to exceptional depreciation. For three major topics, however, it has been necessary to provide space by means of a supplement at the end of the volume; these are: redundancy schemes, excess profits tax refunds, and relief from double taxation. The text of the Finance (No. 2) Act, 1945, will also be found there.

The newly reported cases noted in this edition are rather more than 100 in number.

E. M. K.

March. 1946.

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Ystradyfodwg and Pontypridd Main Sewerage Board v. Bunsted, [1906] 1 K.B. 294, [1907] 1 K.B. 480, [1907] A.C. 264, 76 L.J.K.B. 876, 94 L.T. 20, 96 L.T. 282, 97 L.T. 141, 5 L.G.R. 189, 865, 71 J.P. 76, 425, 23 T.L.R. 105, 621, 5 Tax C. 290 . . . . . 25, 29, 293

Zevo Finance Co., Ltd. *See* Craddock. 120
Zorab. *See* I. R. v 268

THE LAW OF INCOME TAX

CHAPTER 1

THE INCOME TAX: RELIEFS

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The Income Tax—The income tax is a tax on "income" from various sources, estimated according to sets of rules which vary according to the source of the income; many of these sets of rules are highly artificial, so that income for income tax purposes does not by any means necessarily correspond with income in the colloquial sense of money which the recipient receives in the year and which he can spend or save. But for income tax purposes "income" must be money or something capable of being turned into money;[1] a mere privilege, though it may be of value to the person who enjoys it, is not a part of his income.[2] On the other hand, an accretion of capital is not "income,"[3] although income does not escape tax merely because it is used to increase or recoup capital;[4] nor is it any the less "income" because its production involves wastage of capital.[5] The Income Tax Act, 1945, somewhat modifies these principles.[5a]

In the Income Tax Acts, as now current, the phrase "income tax" covers: first, what is commonly known as income tax,[6]

[1] *Tennant* v. *Smith*, [1892] A. C. 150, see p. 245.

[2] In theory, even the annual value on which the tax is charged under Schedule A is capable of being realised by letting the property at a rack-rent. It is immaterial whether the actual occupier has power to let: *I. R.* v. *Miller*, [1930] A. C. 222, see p. 38.

[3] *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 434, see p. 107; *Jones* v. *Leeming*, [1930] A. C. 415, see p. 208; *Kneen* v. *Martin*, [1935] 1 K. B. 499, see p. 231; *I. R.* v. *British Salmson Aero Engines, Ltd.*, [1938] 2 K. B. 482, see p. 203.

[4] See, *e.g.*, *Granite Supply Assn.* v. *Kilton* (1905), 5 Tax C. 168, see p. 112, *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267, see p. 113.

[5] *Collinson Iron Co.* v. *Black* (1881), 6 App. Cas. 315, see p. 111. [5a] See Chap. 7.

[6] The convenient expression "standard tax" is used in Part III of the Act of 1938, see s. 35 (11), p. 611.

namely, that which is charged at a standard rate in the £ on income generally; and, secondly, the additional tax which is charged on the excess of an individual's total income above a stated amount, according to a graduated scale of rates in the £, and which is called "surtax."[7]

The tax is in theory imposed year by year; in practice it is permanent, but the annual Finance Act fixes the standard rate and the rates of surtax.[8]

The Schedules—"Income" is grouped under five Schedules, A, B, C, D, and E.[9] This division at one time corresponded, though but roughly, with the sources from which the income is derived; but that can no longer be said with any accuracy: thus, Schedule A relates to property in land but some of the profits derived from such property are now charged under Cases I, III, and VI of Schedule D;[10] Schedule B relates to the occupation of land (other than ordinary dwelling-houses and buildings occupied for a trade or profession) including the farm land and buildings of individuals farming small areas;[11] Schedule C relates to interest, etc., payable out of public revenues, to which are now added coupons and funding bonds of various kinds;[12] Schedule D includes in its scope other kinds of interest, discounts, etc., trades and professions (these now include farming except as above, as well as market gardening[13]), foreign possessions and securities, and certain miscellaneous sources of income;[13] Schedule E relates to the profits of offices, employments and pensions[14]. The revenue authorities have no option to select which Schedule they shall apply to income from a particular source.[15]

These Schedules are much the most important part of the main Income Tax Act, that of 1918; but because they are called "Schedules," they are shown as a mere appendage to that Act, and are included in its so-called "First Schedule."[16]

Each of the Schedules (A, B, C, D, E) contains its own rules of assessment: but many are found in the body of that Act and in the later Finance Acts. Provisions relating to tax under

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[7] Finance Act, 1927, s. 38, see p. 541.
[8] See No. 2 Act of 1945, s. 15, p. 776, which fixes the standard rate for 1946—47; Act of 1945, s. 4, p. 695, which fixes the rates of surtax for 1944—45; and No. 2 Act of 1945, s. 16, p. 778, for 1945—46, see Chap. 15.
[9] Income Tax Act, 1918, s. 1, see p. 374, *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1.
[10] *Finance Acts*, 1926, s. 28, and Third Sched., see pp. 529, 535, 1940, ss. 13, 15—17, see pp. 635 *et seq.*, and Chap. 2.
[11] Act of 1941, ss. 10, 11, see p. 651, and Chap. 3.
[12] Act of 1938, ss. 22, 25, see p. 599, and Chap. 4.
[13] See Chaps. 5—10.
[14] Act of 1922, s. 18, see p. 508, and Chap. 11.
[15] *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432.
[16] See Report of the Royal Commission on Income Tax, 1920, Cmd. 615, para. 402; and see p. 5.

one Schedule may, however, be applied to tax under another, if not repugnant to the provisions of that other Schedule.[17]

The Income Tax is One Tax—The " unfortunate arrangement " of the Schedules as a mere supplement to the Act has, however, one point in its favour; it shows that the income tax, under whatever Schedule it happens to be charged, is one tax. The following passage from the speech of Lord MACNAGHTEN, in *London Council Council* v. *Att.-Gen.*, contains the classic statement of the nature of the tax:—[18]

" Income tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of income tax assessed under Schedule D, and those assessed under Schedule A or any of the other Schedules of charge. One man has fixed property, another lives by his wits; each contributes to the tax if his income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which taxable income is derived. That is all. Schedule A contains . . . duties chargeable for and in respect of the property in all lands, tenements, and hereditaments capable of actual occupation. There the standard is annual value. It is difficult to see what other standard could have been adopted as a general rule. But there again, if the subject of charge be lands let at rack-rent, the annual value is ' understood to be the rent by the year at which the same are let.' In every case the tax is a tax on income, whatever may be the standard by which the income is measured."

Direct Assessment or Deduction at the Source—The speech just quoted was delivered in one of the leading cases that have arisen in connection with deduction of tax " at the source." The person who is ultimately liable for the tax either pays it under a direct assessment, or submits to a deduction of tax at the hands of some other person from whom he is entitled to receive money; the greater part of the tax is collected by the latter method. The tax charged under Schedule A is, in general, payable by the occupier of land; but if he is a tax payer, he can deduct tax against his landlord on payment of rent. An owner of land, if he is also the occupier, pays the tax directly; but whether he has paid it himself or borne it by way of deduction, he is entitled to deduct tax against a mortgagee.[19]

[17] Act of 1918, s. 208, see p 447. It is difficult to suggest the effect of this provision

[18] [1901] A. C. 26, pp. 35, 36; see also *Coman* v. *Rotunda Hospital*, *supra*; *Brown* v. *National Provident Institution*, [1921] 2 A. C. 222, at 233, 246; *I. R.* v. *Pakenham*, [1927] 1 K. B. 594, at 611; *Fry* v. *Salisbury House, Ltd.*, [1930] A. C. at 441, 462, 467.

[19] See pp. 48, 52.

Again, the tax on interest on public securities is deducted by the authority or agent who pays the interest.[20] A company is taxable on the whole of its profits, and may deduct the tax in paying dividends;[21] but an individual or a partnership carrying on business is directly assessed.[22] The tax charged on offices, employments and pensions under Schedule E is in general deducted at the source.[23]

Where a payment out of profits gives the payer a right to deduct tax, he cannot also have his assessment reduced by the amount of the payment.[24]

The Income Tax Year—The year of assessment for the purposes of income tax begins on April 6 and ends on the following April 5.[25] Under Schedules A and B the annual value of the land as fixed for that year[26] constitutes the taxable income of the year of assessment: under Schedule C, and in other cases where tax is deducted before payment of the income,[27] the tax is, in the first instance at any rate, calculated according to the income thus paid in the year of assessment itself. Under Schedule D, speaking generally, the amount of income to be taxed is ascertained (where the tax is levied by direct assessment) according to the profits of the year preceding the year of assessment;[28] and in such cases tax is payable on that amount, although no profits arise from that source within the year of assessment.[29] No tax is payable, however, if the person has before the beginning of the year of assessment ceased to possess the source of income from which profits arose in the preceding year, or in respect of which he was thus taxable in the preceding year.[30] Each source of income must be looked at separately for this purpose: *e.g.*, a person is not to be taxed in respect of income from foreign shares which he has ceased to possess, merely because he still possesses a foreign business.[31] There are special provisions for computation where any source of income taxable under Schedule D ceases to be possessed, or is acquired, within the year of assessment.[32]

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[20] Sched. C, see Chap. 4.
[21] See pp. 259 *sqq.*
[22] See Chap. 12.
[23] See Chap. 11.
[24] Income Tax Act, 1918, s. 209 (1) (b), see p. 447.
[25] S. 2, see p. 408. In the modern Income Tax Acts the "year of assessment" beginning as above is described as "the year 1944—45," and so on; see Finance Act, 1919, s. 28, p. 495. That phrase in any Finance Act includes the whole year (beginning on April 6) in which the Act is passed: *Eastwood* v. *I. R.*, [1943] 1 K. B. 314 (C. A.).
[26] Not necessarily in the year, see p. 37.
[27] See Chaps. 4 and 7.
[28] See Chap. 6, Finance Act, 1926, s. 28, see p. 529.
[29] Act of 1926, s. 22, see p. 528, which altered the law laid down in earlier cases; see also p. 182.
[30] In such cases no liability is imposed by s. 22 of the Act of 1926, and the rules of computation referred to do not themselves create a liability to tax; see the cases cited in note [10] on p. 182.
[31] *Cf. Orsenger* v. *Maxwell*, [1926] 1 K. B. 430.
[32] Sched. D, Case III, r. 2, see p. 479; Act of 1926, ss. 29 (1), 30, 31, see pp. 529—532, and Chaps. 6—9. As to offices, etc., in the Forces, see Act of 1927, s. 45 (4), (5), p. 546, and Chap. 11.

The tax (when not levied by deduction) is payable in one or two instalments for the year according to the source of income on which it is imposed; in the case of railway companies it is payable quarterly.[33]

The Income Tax Acts—Many of the cardinal principles on which the liability to income tax is based and by which the amount of that liability is measured are left unexpressed in the Income Tax Acts, and are to be found only in the decisions of the Courts and of the House of Lords, which are based upon inferences drawn from the "general scheme" of the Acts. For instance, the Acts may be searched in vain for any explicit direction that a mere privilege is not to be charged as income;[34] that an accretion of capital is not so chargeable;[35] that the question whether a company carries on business in the United Kingdom is to be answered by ascertaining where its head and seat and directing power are situate;[36] that in computing the profits of a trade any expense (as to which there is no express prohibition) is to be deducted, if on the facts of the case it is a proper debit item to be charged against incomings.[37]

The Income Tax Acts, therefore, do not provide a code of the law on the subject.[38] They consist of a number of more or less disconnected enactments which leave undealt-with many matters of the first importance; while they frequently cover the same ground more than once, in such a manner that the reader is puzzled to know whether the second enactment is intended to limit or expand the first, or is merely superfluous.[39]

In 1918, the enactments then in force were repealed, re-arranged and re-enacted with some verbal amendments by the Income Tax Act, 1918;[40] but any improvement in clarity that may have been effected by that process has been counteracted by the passing of more than twenty subsequent Acts. For the Finance Act of each year contains, as a rule, a common form of clause applying to the income tax sanctioned thereby the enactments in force in the previous year,[41] subject of course to any amendments contained in the annual Act

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[33] See p. 397.

[34] *Tennant* v. *Smith*, see p. 1.

[35] *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424; *I. R.* v. *Blott*, [1921] 2 A. C. 171.

[36] See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, and the cases cited therewith, pp. 79 *sqq.*

[37] *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. 433, see p. 98.

[38] Report of Royal Commission, paras. 398—401.

[39] See, for instance, the rules in No. IV of Sched. A "for estimating annual value," p. 456, which appear to be mere illustrations, selected at random and far from exhaustive, of the application of the definition of "annual value" in the General Rule; the provisions as to "additional assessments" and "surcharges" in ss. 125 and 126 (see p. 426), where s. 126 deals in a different way with one class of the cases already dealt with by s. 125.

[40] 8 & 9 Geo. 5, c. 40.

[41] *E.g.*, Act of 1944, s. 19 (2), see p. 684.

itself. Thus, the income tax is now regulated by the Income Tax Act, 1918, together with the relevant "Parts" of the Finance Acts, 1919—1945, inclusive[42]; these are all included in the expression "The Income Tax Acts."[43] They are set out in the Appendix to this book.

Although the "standard rate"[44] is not fixed until the Finance Act for the year is passed, the provisions in force on the last day of the preceding year are carried forward in order to enable arrangements for assessment and collection at the source and so forth to proceed continuously at any time of the year;[45] and provision is made for subsequent deduction (or direct assessment) where the amount already deducted proves insufficient owing to the new Finance Act imposing tax at a higher rate.[46]

Construction of the Acts—The intention with which the Income Tax Act, 1918, was passed, was to consolidate[47] and not to codify the earlier enactments; there was no attempt to harmonise them, and in but few places were any existing ambiguities removed. Even apart from the fact (to which attention has already been drawn) that many of its underlying principles can only be gathered by implication, it is extraordinarily difficult to interpret. Ordinary canons of construction cannot be applied; it is unsafe to assume without diligent study that the same word is used in two places in the same sense, that different words are not used to mean the same thing, or that any series of expressions or any set of provisions is intended to be exhaustive, so that what is not mentioned is excluded.[48] "In these Acts," said Lord WRENBURY,[49] speaking of the Acts of 1842 and 1880, "it is not possible to rest any conclusion upon a particular word. The same word is in one section used in one sense, and in another in a different sense": and Earl LOREBURN added.[50] "I regret to say that in this respect[51] the language

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[42] Also the Employments and Offices, and Employments, Acts, 1944 and 1945, and the Income Tax Act, 1945.

[43] Act of 1919, s. 28, see p. 495; each Finance Act provides that the relevant Part "shall be construed as one with the Income Tax Acts," see, *e.g.*, Act of 1944 s. 49 (4), p. 691.

[44] Act of 1927, s. 38, see p. 541.

[45] Act of 1918, s. 210, see p. 447. As to the effect of a resolution of the Committee of Ways and Means fixing the rate of tax (pending the passing of the annual Act), see the Provisional Collection of Taxes Act, 1913 (3 & 4 Geo. 5, c. 3), as well as Finance Act, 1930, s. 12 (1), p. 552.

[46] Act of 1918, s. 211, as extended by Finance Act, 1920, s. 12 (2), see p. 447. S. 211 and the Act of 1913 referred to in note [45] were adapted for use in connection with the change of rate effected by the No. 2 Act of 1939 by s. 7 (2) proviso, (4) and Sixth Sched.: see *Shadbolt* v. *Pender*, [1946] 1 All E. R. 16.

[47] See the title of the Act, p. 406, and *per* Lord WRENBURY, in *Great Western Ry.* v. *Bater*, [1922] 2 A. C. at 31.

[48] See *Russell* v. *Scott*, [1944] N. I. L. R. 67, *per* ANDREWS, L.C.J.

[49] In *Kensington Comrs.* v. *Aramayo*, [1916] 1 A. C. at 227—229, see also his Lordship's opening remarks, at 225.

[50] *Ibid.* at 236.

[51] The matter in question in *Aramayo's Case* is one of the very few that are elucidated by the Act of 1918, see p. 366, note [19].

of the different Acts is not coherent. You may strain the language to mean either one thing or the other. You must strain it to arrive at any conclusion." Except in a small number of instances, the language of the Act of 1918 is open to the same strictures, and is as difficult to interpret, as that of the earlier Acts; and the difficulty is increased by the copious amendments contained in the subsequent annual Acts.[42] "Verbal consistency is the last virtue that can be attributed to a code which uses so vital a term as 'assessment' in no less than eight differing senses."[43] A section in one of these Acts may declare the meaning of an earlier provision, *e.g.*, a rule of the Act of 1918; but unless it does so, the later enactment is not to be looked at as interpreting the earlier.[44]

It is often said that a taxing Act must be construed strictly in favour of the subject; it may perhaps be more correct to say that a taxing Act must be construed against either the Crown or the person sought to be charged, with perfect strictness—so far as the language of the Act enables the Judges to discover the intention of the Legislature. "No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden upon him. . . . The only safe rule is to look at the words of the enactments and see what is the intention expressed by those words."[45] "Our duty . . . is to find out what the Legislature must be taken to have really meant by the expressions which it has used, without necessarily attributing to [it] a precise appreciation of the technical appropriateness of its language."[46]

Application to the Three Countries—The Income Tax Acts apply to the whole of the United Kingdom, that is, of Great Britain and Northern Ireland;[47] although there are a series of special provisions modifying their application in Northern Ireland[48] (chiefly as to the methods of assessment),[49] and a few

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[42] Difficulties caused by repeals of particular sections in the interpretation of those remaining or those subsequently enacted are illustrated in *I. R.* v. *Dalgety & Co., Ltd.*, [1930] A. C. 527: see *per* Lord BUCKMASTER, at 533, 534.

[43] *Per* Lord MACMILLAN in *City of London Commrs.* v. *Gibbs*, [1942] A. C. at 424.

[44] *Ormond Investment Co.* v. *Betts*, [1928] A. C. 143.

[45] *Per* Lord BLACKBURN, in *Colquhoun Iron Co.* v. *Black* (1881), 6 App. Cas. at 330, see p. 110; see also *per* ROWLATT, J., in *Cape Brandy Syndicate* v. *I. R.*, [1921] 1 K. B. at 71; *per* Lord BUCKMASTER in *Ormond Investment Co.* v *Betts*, [1928] A. C. at 151; *per* Lord GREENE, M.R., in *Howard de Walden* v *I. R.*, [1942] 1 K. B. at 397; *per* Viscount SIMON, L.C., in *Canadian Eagle, etc.* v. *R.* (1945), 61 T. L. R. 577.

[46] *Per* Viscount SIMON, L.C., in *City of London Commrs* v. *Gibbs*, [1942] A. C. at 414.

[47] See Royal Titles Act, 1927 (17 & 18 Geo. 5, c. 4), s. 2 (2).

[48] These will be found in Part IX, ss. 186—206 (see p. 442); the power of the Parliament of Northern Ireland to make laws with respect to the imposing of taxes does not extend to income tax or surtax (Government of Ireland Act, 1920 (10 & 11 Geo. 5, c. 67), s. 21 (1); but it may grant relief from either of those taxes to individuals resident and domiciled within its jurisdiction, s. 25. As to the Irish Free State, see Constitution Act, 1922 (13 Geo. 5, Sess. 2, c. 1), s. 2; Consequential Provisions Act (13 Geo. 5, Sess. 2, c. 2), s. 5, and orders thereunder.

[49] See, also, Act of 1936, s. 23, p. 387.

modifications also as regards Scotland.[60] The decisions of the Courts in any of the three countries are not binding upon the Courts of any other, but are generally followed.[61] But a decision of the House of Lords upon a case from any one of the countries is binding in the others also. In deciding a point on which there had been a conflict of decision between the English and Scottish Courts, the House of Lords have adopted the following rule—"You must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries"[62] and even where there has been no such conflict, "it is desirable to adopt a construction of statutory words which avoids differences of interpretation of a technical character such as are calculated to produce inequalities of taxation as between . . . the two countries."[63]

Reliefs—An individual whose total income does not exceed £120 is exempt.[64] Apart from this, the income tax proper, though levied at a standard rate, is mitigated in its application to individuals by means of certain "reliefs," which may be summarily described as follows:—

Relief by allowance of tax on £110 or £180, as the case may be;
Relief in respect of dependants other than wives;
Relief in respect of earned income;
Relief in respect of incomes of persons of sixty-five;
Relief by reduction of the rate of tax on £125 or some smaller sum.[65]
Relief in respect of life insurance premiums and similar payments;[66]
Relief in respect of Dominion income tax.[67]

The last of these is also admissible in the case of companies and other bodies of persons.

The above will be considered at the outset, before discussing in detail the various sources of income which give rise to liability and the principles of assessment. Exemptions and abatements

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[60] See, *e.g.*, Act of 1918, ss. 85, 96, 186.

[61] A few points on which divergent decisions have been given in the different countries are noted in the text as they occur; see, *e.g.*, *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496, p. 142, *Leith, etc., Steam Packet Co.* v. *Musgrave* (1899), 1 F. 1117, p. 132.

[62] *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, see p. 580, per Lord MACNAGHTEN, at 580.

[63] *City of London Commrs.* v. *Gibbs*, [1942] A. C. 402, per Viscount SIMON, L.C., at 414.

[64] Act of 1935, s. 19, as amended by No. 2 Act of 1945, s. 17 (3); see p. 576. For the meaning of "total income" see Chap. 15. Where the total income is less than £135, a marginal allowance is given: s. 19 (2), and see *I. R.* v. *Cook*, p. 193.

[65] As to the above, see pp. 10—15. These "reliefs" are grouped under that name by s. 40 of the Finance Act, 1927 (see p. 510), and the Fifth Schedule specifies the sections of the Acts of 1920 and 1925 to be read with it.

[66] Act of 1918, s. 22, see pp. 16—19.

[67] Act of 1920, s. 27, see pp. 19—23.

which attach to the income of charitable bodies and other institutions are dealt with in a later chapter.[68]

On a future date, certain amounts are to be credited to taxpayers in consequence of the reduction of reliefs by the Act of 1941, for the years 1941—42 to 1945—46 inclusive.[69] On application, the amount thus due from the Crown may be ascertained separately for husband and wife, if the latter has an income: the amount may not be assigned or charged during the taxpayer's lifetime, and is not subject to death duties if the taxpayer dies before the date on which it is credited.

What Individuals are entitled to Reliefs—The reliefs above described (apart from relief in respect of Dominion tax) are given to individuals only,[70] including a husband and wife in certain circumstances;[71] partners in trades or professions or in the occupation of land, and joint owners or tenants of any property, enjoy these reliefs according to their respective interests.[72] But joint occupation of land does not give each joint occupier a right to any relief unless there is also a partnership between them,[73] and the partnership must exist in fact and not merely on paper.[74] There is no right to any relief in respect of income while the source of that income is in the hands of a trustee in bankruptcy.[75]

An individual who is not resident[76] in the United Kingdom is given no right to receive any such relief, unless he is a British subject, or unless he belongs to one of the classes described below.[77] In these excepted cases the relief is calculated by means of a proportion sum, so that the whole of the individual's income is taken into account, including every part which is not subject to United Kingdom income tax; but such income is treated for the purpose of the calculation as being reduced by all the reliefs,[78] other than Dominion relief.[79] The following are the classes referred to: persons who are or have been employed in the service of the Crown, widows of such persons, persons who are employed in the service of any native State under the protection of His Majesty, persons who are

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[68] See Chap 13.

[69] Act of 1941, s. 7, see p 649, and Regns., p. 749, subject to deduction of tax discharged, Employments Act, 1943, s. 3 (5), p. 682. See No. 2 Act of 1945, s. 17 (4), p. 779.

[70] Act of 1920, ss. 17, 23, see pp. 495, 498 As to claims by executors, etc., see p. 277.

[71] Finance Act, 1920, ss. 18, 25, see pp. 496, 498. Act of 1925, s. 15 (2), see p. 524; Income Tax Act, 1918, General Rules, rr. 16, 17, see p 489.

[72] Act of 1918, s. 20, see p. 408 As to earned income, however, see s. 14 (3) (c), p. 407.

[73] *McKie* v *Luck* (1926), 9 Tax C. 511.

[74] *Hawker* v. *Compton* (1922), 8 Tax C. 307; *Dickenson* v *Gross* (1927), 137 L. T. 351, 11 Tax C. 614, *I. R.* v. *Williamson* (1928), 14 Tax C 335, *Calder* v. *Allanson* (1935), 19 Tax C. 293

[75] *I. R.* v. *Fleming* (1928), 8 L. T. 530. [76] See pp. 265 *sqq.*

[77] Finance Act, 1920, s. 24, see p. 498. See also Act of 1943, s. 15 (5), p. 676. As to claims for allowances or deductions, proof of status or residence, and appeal, see Chap 16

[78] *MacKillop* v *I. R.*, [1943] 2 All E. R. 215. [79] Act of 1944, s 23, see p 68

employed in the service of any missionary society, persons resident in the Isle of Man or Channel Islands, persons who have previously resided within the United Kingdom and are now resident abroad for the sake of their own health or that of a member of their family resident with them. If the claimant is a British subject, he need not belong to any of these classes; but his income not chargeable in the United Kingdom is nevertheless brought into the calculation, as described above. In such a case he cannot if he receives income from a trust fund consisting of British and foreign investments, and these have not been appropriated to his share or to payment of his annuity, claim to marshal those investments so as to increase his relief.[80]

Calculation of Reliefs—In the case of an individual who is entitled to any of these reliefs (apart from relief for Dominion tax) the amount of the income tax which would otherwise be levied at the standard rate on his total income is reduced by the amount of tax at the standard rate, or at one-half of the standard rate (as the case may be), on certain portions of his total income.[81] The portions of total income to which the reduction is applied are arrived at as follows:-

One-tenth of the "earned income"[82] is first deducted from the total income; but the deduction may not in any case exceed £150.[83] In the case of an individual of sixty-five, or a husband with a wife of sixty-five, if the income (whether earned or not) does not exceed £500 a year, one-tenth of the whole is deducted.[84]

From the net sum thus arrived at there is deducted in the case of a married man, £180, with a further sum if the wife herself has an earned income;[85] in the case of a single man or woman, £110;[85] and certain further deductions are made in respect of children and other dependants.[86] The deduction of £180 in the case of a married man is not allowed[87] unless either (1) the husband and wife are living together, or (2) (even if she is not living with him) the wife is wholly maintained by the husband during the year of assessment in such a way that in paying for her maintenance he is unable to deduct tax against the sums paid, and therefore to exclude those contributions from his total income as ascertained for income tax purposes.[88] In any other

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[80] *I. R. v. Crawshay* (1935), 14 A. T. C. 320, 153 L. T. 457.

[81] The statement in the text is intended to give the effect of s. 40 (1), (2) of the Act of 1927 (see p. 542), which sub-sections impart a somewhat different form to these reliefs, though they do not repeal the previously existing provisions cited in the following notes, nor do they appear to alter them in substance.

[82] As to the meaning of this expression, see p. 12.

[83] Act of 1925, s. 15 (1) (see p. 524), as amended by Act of 1941, s. 6 (2).

[84] Act of 1925, s. 16 (2), amended as stated in note [83].

[85] Act of 1920, s. 18 (1) (see p. 496), as amended by No. 2 Act of 1945, s. 17 (2).

[86] See p. 14. [87] Act of 1920, s. 18 (1).

[88] As to cases in which tax can be deducted against payments made for a wife's maintenance, see p. 189. As regards nullity, see *Dodsworth v. Dale*, p. 275.

case, the husband is entitled to a deduction of £100 only, as if he were single;[89] if the wife is living apart and is carrying on a trade or is entitled to any property or profits to her separate use, she is assessable separately from her husband,[90] and is therefore also entitled to the deduction of £110.

Where the deduction of £180 is admissible in the case of a married man, and the total income includes any earned income of the wife, the amount of that deduction is increased by nine-tenths of the wife's earned income;[91] the increase is limited to £80.[92] This increase does not prevent the full earned-income deduction of one-tenth being calculated on the aggregate earned incomes of husband and wife, subject to a single maximum of £150 as above stated

The individual entitled to any of the above reliefs has his income tax reduced by tax at the standard rate, that is (in 1946–47) at 9*s.* in the £, on the amount of any of the above deductions which is admissible.[93] Further, any individual entitled to relief[94] has his income tax reduced by tax at two-thirds of the standard rate on the amount of total income remaining after the admissible deductions have been made from it, if that amount does not exceed the tax on £50: but if that amount exceeds the tax on £50, then by two-thirds of the tax on £50 plus one-third of the excess, or one-third of the tax on £75, whichever is less.[95] The maximum reduction is thus two-thirds of the tax on £50, plus one-third on £75. Dominion tax relief may cause a further adjustment of the amount of United Kingdom tax payable.[96] But the above reliefs are not to be increased by reason of any claim for adjustment or for repayment on other grounds, apart from Dominion tax and life insurance premiums.[97]

Where the income is subject to direct taxation, the amount of tax to be levied is reduced by the reliefs; where it has already been taxed by deduction at the source, the amount by which the tax is thus reduced is repaid [98]

[89] Finance Act, 1920, s. 18, see note [85].

[90] See p. 274.

[91] S. 18 (2), as amended by Act of 1927, s. 40 (1) and Fifth Sched., Part I, and by Act of 1941 s. 6 (3). The income must be *bonâ fide* earned by the wife in her own right: *Thompson* v. *Bruce* (1927), 11 Tax C. 607, and does not include a pension, etc., paid to her in respect of her husband's services in an office or employment of profit: Act of 1937, s. 17, see p. 595. But such a pension will rank for the "earned income" allowance where the spouses are living together

[92] Act of 1942, s. 23, see p. 496.

[93] Act of 1927, s. 40 (1), see p. 542. As to the standard rate, see s. 38 (1), p. 541.

[94] See p. 9. [95] S. 40 (3), as amended, see p. 543

[96] Act of 1927, s. 40 (1, 2) proviso as amended, see p. 542.

[97] This appears to be the effect intended by s. 40 (3): as to life insurance, see p. 16.

[98] See Chap. 18: the rule in *Re Pettit*, see p. 193, does not affect the amount repayable, even where the fixed annuity payable is £110 or less. *I. R.* v. *Cook*, p. 305.

Earned Income—As already stated, in order to arrive at the assessable income of an individual, one-tenth of his "earned income" is to be deducted from his total income; but this deduction is not to exceed £150.[99] So that if his earned income is, say, £1,200, he is entitled to a deduction of tax at the standard rate on £120; but if it is £1,500 or over, the deduction of tax is calculated on £150.[1]

In general terms it may be said that "earned income" covers salaries, wages and pensions, as well as the profits of any trade, business or profession, carried on by the individual himself. Only the following kinds of income are included by the definition of the term: [2]

income arising in respect of any remuneration from any office or employment of profit[3] held by the individual, after any deduction allowed in respect of a contribution to a superannuation fund has been made; [4]

income arising in respect of any pension, superannuation, or other allowance, deferred pay or compensation for loss of office, given in respect of the past services in any office or employment of profit of the individual or of her husband or his or her parent; it makes no difference whether the individual, husband or parent has contributed to the pension, etc., or not; [5]

income in respect of any pension, etc., given to the individual in respect of the past services of any person deceased (whether or not those services have been done in any office or employment of profit);—[5]

income arising in respect of Civil List pensions;- [6]

income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual;—[6]

any income charged under Schedule B,[7] provided that it "is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either

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[99] Act of 1925, s. 15 (1) (see p. 524), as amended by Act of 1941, s. 6 (2).

[1] Act of 1927, s. 40 (1), see p. 542.

[2] Act of 1918, s. 14 (3), read with Finance Act, 1920, s. 23, see pp. 406, 502.

[3] Chargeable in all but a very limited class of cases under Sched. E, see Chap. 11. The voluntary and revocable pensions and annual payments made chargeable by s. 17 of the Act of 1932 (see pp. 240, 242), are included in "earned income," s. 17 (2), see p. 566.

[4] *Frame* v. *Farrand* (1928), 13 Tax C. 861, see p. 247.

[5] Taxed under Sched. E, see Chap. 11.

[6] If the property is land, the income is charged under Sched. A: see Chap. 2. Other forms of income within this description may be charged under Sched. E., see Chap. 11; or Sched. D: see pp. 179, 244. Note that the privilege of a servant residing free of rent in a house provided by his employer may not be taxable income at all: *Tennant* v. *Smith*, [1892] A. C. 150, see p. 245, as explained in *I. R.* v. *Miller*, [1930] A. C. 222, see p. 38.

[7] That is, income arising from the occupation of land: see Chap. 3. See also *McKie* v. *Lack*; *Humber* v. *Compton*; *Dickenson* v. *Grant*, cited p. 9.

as an individual, or, in the case of a partnership, as a partner personally acting therein ";—

any income charged under Schedule D,[8] provided as above;—

in certain circumstances, the annual value of a house occupied rent free by a clergyman or minister of any religious denomination.[9]

If an annual payment in respect of which tax is deductible by the payer is met, or is met in part, out of earned income, the earned income is (for the purpose of calculating the deduction of one-tenth) to be taken as being reduced by the amount of the payment which is met out of it.[10]

It will be observed that where a trade, profession or vocation is carried on in partnership, the income of a sleeping partner is not "earned income"; still less is that of a shareholder in a company.

In order to be "earned income," the profits must be earned by the individual to whom they belong; and the income of a business carried on by trustees on behalf of minors,[11] or by a curator on behalf of a lunatic,[12] is not earned income.

Where husband and wife are living together, the profits of either the husband or wife may be "earned income,"[13] and if the wife herself has an earned income, the allowance will be calculated upon the aggregate of the earned incomes of husband and wife. In such a case an addition is also made to the personal allowance.[14]

Incomes of Persons of Sixty-five A man or woman who was sixty-five years of age, and any man whose wife, living with him, was of that age, at the commencement of the year of assessment (that is, at April 6), and whose total income for that year does not exceed £500, is entitled to a deduction of one-tenth of his total income in arriving at the assessable income and to a deduction of tax on that amount,[15] in the same way as if the whole income were "earned income."[16] It is immaterial whether any part is in fact "earned income"; but if any part is so, there is no additional deduction.[17] The total income for

[8] In view of the words of limitation quoted, the great majority of cases of earned income charged under Sched D must fall within Cases I and II of Sched. D: see Chaps. 5 and 6; but it is not inconceivable that some may fall within other Cases of that Schedule, see Chaps. 8, 9, 10. Patent income is now included, see p. 175.

[9] Finance Act, 1919, s. 22, see p. 494. Since the decision in *I. R. v. Muller* (see p. 38), this section appears to have but a limited application.

[10] *Adams v. Munro* (1930), 15 Tax C. 413; *Smith v. Eden* (1934), 19 Tax C. 110. Cf. the reduction of "total income" by charges of this kind: see p. 306.

[11] *Fry v. Shaw's Trustees*, 1915 S. C. 189; 6 Tax C. 583.

[12] *M'Dougall v. Smith* (1918), 56 S. L. R. 80; 7 Tax C. 134.

[13] Act of 1918, s. 14 (3), (4), see p. 448. As to assessment of husband and wife, see p. 273.

[14] See p. 11.

[15] Act of 1928, s. 15 (2); Act of 1927, s. 40 (1), see pp. 324, 842; Act of 1941, s. 6 (2). As to total income, see Chap. 14.

[16] See above.

[17] Act of 1928, s. 15 (2), proviso.

this purpose includes that of the wife.[18] If the income is wholly or partly taxed by way of deduction at the source, repayment will be made.[19]

Where the income is slightly above £500 no more income tax will be payable than is equal to what would have been payable if the income had not exceeded £500, together with three-quarters of the amount by which the income exceeds £500.[20]

Deductions for Dependants other than Wives[21]—In addition to the reliefs above described, the following deductions with regard to dependants other than wives are made from income, and the tax payable is reduced by tax on the amount of the deduction, provided (in cases referred to in the next two paragraphs) that no deduction is made from any other person's income in respect of the same dependant:—[22]

A widower or widow who has a female relative,[23] or (in the absence of any such relative) employs[24] another female person, resident with him or her to take care of any child,[25] or as a housekeeper, a deduction of £50:[26]

An unmarried man who has living with him and maintains his mother (if a widow or living apart from her husband), or some other female relative,[23] to look after a child-brother or child-sister,[25] a deduction of £50:[27]

A person who has any child of his own or stepchild[25] living at any time within the year of assessment, a deduction of £50 for each child; and a person who, for the year of assessment, has the custody of and maintains at his own expense any child, is entitled to the same deduction as if the child were his own; in either case, the child must not be entitled in his own right to an income exceeding £50 a year (scholarships, bursaries, etc., being left out of account[28]), and, if the child is over sixteen,

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[18] See p. 273.

[19] As to claims for repayment, see p. 362

[20] S. 15 (2), latter part, as amended by No. 2 Act of 1940, s. 8 (2).

[21] It has not been thought necessary to deal fully with these provisions in the text; reference should be made to the sections themselves.

[22] Finance Act, 1920, s. 19 (1), proviso (a), (b), s. 20 (b), s. 21 (2), see pp. 496 *sqq.*; Act of 1927, s. 40 (1), see p. 542.

[23] "Relative" includes a person who while under sixteen was in the custody of the claimant and was maintained by him at his own expense. Act of 1920, s. 33.

[24] *Macfarlane* v. *Hubert* (1935), 19 Tax C. 660, where the person was found not to be "employed."

[25] "Child" (where the parent or step-parent is a claimant) includes a step-child and an illegitimate child whose parents have married each other after his birth; s. 21 (1), s. 19 (2), s. 20 (a): see note [23].

[26] Act of 1920, s. 19, see p. 496; amended by Act of 1924, s. 22, as modified by No. 2 Act of 1931, s. 8 (1) and Fourth Sched. These provisions do not give relief to a divorced person, whose wife (or husband) is living: *Kliman* v. *Winchworth* (1933), 17 Tax C. 569; nor can their benefit be claimed by a widower for the year of assessment in which his wife died and he received the personal allowance as a married man (see p. 10, note [5b]): *Rossi* v. *Blenden*, [1924] 1 K. B. 387. The word "resident" involves sleeping in the house. *Brown* v. *Adamson* (1937), 53 T. L. R. 646; 21 Tax C. 186.

[27] Act of 1920, s. 20; Act of 1924, s. 22, modified as above.

[28] See next page.

he must be receiving full-time instruction at an educational establishment,[29] or whole-time training for any trade, profession or vocation;[30] if more than one individual would be entitled to the relief, it is to be apportioned;[31] where an individual is entitled to this relief in respect of a child resident with him (or her), there is a further deduction of tax on £50 in respect of one female, resident with him and maintained or employed by him to have charge and care of the child;[32]

A person maintaining at his own expense a relative[33] incapacitated by old age or infirmity, or his or his wife's widowed mother, whether incapacitated or not, if the total income of the incapacitated relative or the widowed mother does not exceed £80 a year, a deduction of £50 in respect of each person so maintained; the deduction is to be apportioned, if the person is maintained jointly;[34]

A person who has living with him, and helps to maintain a relative who has on that account been denied (wholly or in part) unemployment allowance or public assistance, a deduction of not more than £50:[35]

A person who by reason of old age or infirmity is compelled to depend upon the services of a daughter resident with him and maintained by him, a deduction of £25.[36]

Scholarships, etc.—Income arising from a scholarship, exhibition, bursary or similar educational endowment held by a person receiving full-time instruction at a university, college, school, or other educational establishment is exempt from income tax and super-tax, and is to be excluded in computing income.[37]

Wounds Pensions, etc.: War Gratuities—Wounds and disability pensions[38] are exempt from income tax. Allowances granted by the Minister of Pensions to widows in respect of

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[29] Act of 1920, s. 21 (1), (2), as amended by Act of 1928, s. 16, Act of 1935, s. 21, and Act of 1936, s. 17, and by No. 2 Act of 1939, s. 9 (3) (see p. 497). The deduction under s. 21 (1) will be available though the child is born within the year. As to "full-time instruction," etc., see *Heaslip* v. *Hosemer* (1927), 44 T. L. R. 112. Payments under a Divorce Court order to a wife as guardian for the child's education are not income to which a child "is entitled in his own right": see Act of 1920, s. 21 (3); *Stevens* v. *Turard*, [1940] 1 K. B. 204.

[30] Act of 1938, s. 20, see p. 598; note the conditions in sub-s. (1) (a), (b). Payments to an apprentice or articled clerk are, however, to be included in ascertaining whether his income exceeds £50: *Miles* v. *Morrow* (1940), 23 Tax C. 465.

[31] Act of 1940, s. 24, see p. 642. See also p. 237.

[32] Act of 1943, s. 15, see p. 676; there are various limitations for which the section should be consulted, and the relief may have to be apportioned: see sub-s. (4).

[33] Of his or his wife's; and see note [34].

[34] Act of 1920, s. 22, as amended by Act of 1943, s. 16 (1), see pp. 497, 676. The deduction of £50 is reduced in certain cases. sub-s. (1) (b).

[35] Act of 1938, s. 21, as amended by Act of 1943, s. 16 (2), see p. 599; where the relief last mentioned can be claimed, this relief cannot.

[36] Act of 1920, s. 22 (1), see p. 497; this particular relief is not affected by Act of 1943, s. 16 (1).

[37] Finance Act, 1920, s. 28, see p. 502. [38] Finance Act, 1919, s. 16, see p. 494.

their children are not to be reckoned in computing the incomes of the widows.[39] War gratuities in respect of service connected with the 1939—45 war are exempt.[39a]

Life Insurance Premiums and similar Payments—A limited amount of relief is given by way of reduction or repayment of tax in respect of life insurance premiums and certain other payments of a similar kind.[40] This relief is admissible only to the individuals described above as being entitled to reliefs.[41] The classes of premiums and payments which give rise to such relief are as follows:—

First,[42] premiums paid for an insurance on a man or woman's own life or on that of his wife or her husband with any insurance company legally established in the United Kingdom or a British possession, or lawfully carrying on business in the United Kingdom with a registered friendly society,[43] or with underwriters.[44] Such insurances include policies under which a sum is to be paid either on the death of the assured, or upon his attaining a certain age.[45] But if the contract does not include the securing of a capital sum on death, no relief is in general given, unless the contract was made on or before June 22, 1916.[46] The relief is admissible whether the payment is made by the husband, or by the wife out of her separate income;[47] and if they are separately assessed "as if they were not married" the relief is given to the party making the payment.[48] The premium must, however, be payable by the person assured, or by his wife or her husband, as the case may be; an insurance by joint persons on their joint lives is not sufficient,[49] except, perhaps, where these persons are husband and wife.

Secondly, premiums paid "for" any contract for any deferred annuity on a man or woman's own life or the life of his wife or her husband with any such insurance company, with a registered friendly society, with the National Debt Commissioners,[50] or with underwriters.[51] What is said in the last paragraph as to payments by husband or wife, and as to joint lives, applies here also.

Thirdly, sums paid by any person in fulfilment of a liability

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[39] Act of 1922, s. 27, see p. 513.

[39a] See the list of such in No. 2 Act of 1945, s. 23, p. 781.

[40] Act of 1918, s. 32, as amended by Finance Act, 1920, s. 26, and Third Schedule: see pp. 410—412.

[41] Act of 1920, s. 24 (1), see p. 642.

[42] Act of 1918, s. 32 (1) (a) and (8), see pp. 410, 412.

[43] See p. 73.

[44] Of the class described in Act of 1932, s. 20, see p. 567.

[45] *Gould* v. *Curtis*, [1912] 1 K. B. 635; [1913] 3 K. B. 84.

[46] S. 32 (3) (c) (ii), see p. 411. The meaning of "or other payments" in this paragraph is obscure: see *Turton* v. *O'Brien*, 7 Tax C. *per* ROWLATT, J., at 175. See below for the specific exceptions contained in the proviso.

[47] Act of 1918, s. 32 (8), inserted by Finance Act, 1920, s. 26 (7), see p. 412.

[48] Finance Act, 1920, s. 25 (1) (c), proviso, see p. 499.

[49] *Wilson* v *Simpson*, [1926] 2 K. B. 500.

[50] Act of 1918, s. 32 (1) (a) and (8), see pp. 410, 412.

[51] Of the class described in Act of 1932, s. 20, see p. 567.

imposed by any Act of Parliament or by the terms and conditions of his employment for the purpose of securing a deferred annuity to his widow, or provision for his children after his death.[52]

Fourthly, sums deducted from any person's salary or stipend under such a liability and for such a purpose.[53]

The premium, payment or deduction in any of these cases need not be an annual one; and payment under a single-premium policy affords a ground for relief; so also, it would seem, does a lump sum paid in commutation of future payments.[54]

In a case of insurance (or of a contract for a deferred annuity) where the insurers receive only a part of the premium in cash and debit the assured with the remainder as a loan bearing interest, the assured is only entitled to relief in respect of the cash sum actually paid by him.[55]

The application of these provisions is, however, modified as regards cases where the insurance or the contract for a deferred annuity has been made after June 22, 1916. Where such is the case no relief is to be given except in respect of premiums or other payments[56] payable on policies for securing a capital sum on death (whether in conjunction with any other benefit or not), and none is to be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance.[57] There is an exception again to this exception: premiums or payments on policies and contracts in connection with such superannuation or pension schemes as are described in the proviso,[58] and on certain policies taken out by teachers of secondary schools, are within the benefit of the section even if the insurances or contracts were made after June 22, 1916; but the rate of relief allowed is different in this case.[59]

Relief in respect of life assurance premiums is not taken into account in calculating the amount of relief in respect of Dominion income tax.[59]

Life Insurance, etc.: Extent of Relief—Subject to certain specific restrictions, the reductions of tax are calculated upon

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[52] S. 32 (1) (b); contributions to superannuation funds and contributions made to secure a gratuity on death are differently treated: see pp. 246 *sqq.*

[53] S. 32 (1) (b).

[54] S. 32 (1), as amended by Act of 1920, s. 26 (1), see pp. 410, 411. The contrary decision in *Turton* v. *O'Brien* (1919), 7 Tax C. 170, was given before the Act of 1920 was passed.

[55] *Hunter* v. *R.*, [1904] A. C. 161, *R.* v *Special Commrs., Ex p. Horner*, [1932] W. N. 226; 17 Tax C. 362.

[56] See note [46] on p. 16.

[57] Act of 1918, s. 32 (3) (e) (ii), (iii), see p. 411.

[58] S. 32 (3) (e), proviso.

[59] Finance Act, 1920, s. 27 (8) (d), see p. 502.

the premium paid or the sum paid or deducted, according to a series of provisions, of which a summary is attempted below:—

In the case of an insurance or contract made on or before June 22, 1916, tax at half the standard rate[60] where the total income from all sources does not exceed £1,000, at three-quarters of the standard rate where it exceeds £1,000, but does not exceed £2,000 and at the standard rate where it exceeds £2,000.[61] The allowance may be increased to a certain extent where the total income is so close to £1,000 or £2,000 as to cause hardship.[62] In the case of an insurance or contract made after June 22, 1916,[63] whatever the amount of the total income, the allowance is at half the standard rate.[64] The "standard rate" is limited to 7*s.* in the £.[65]

Where an individual not resident in the United Kingdom is entitled to relief, his total income for this purpose includes any part not liable to United Kingdom tax.[66]

The amount of premium, etc., to which the standard rate, or a fraction thereof, is to be applied is restricted as follows: The amount must not exceed one-sixth[67] of the total income from all sources;[68] in respect of any premium or other payment[69] payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not), the amount must not exceed seven per cent. of the capital sum payable on death, excluding from such capital sum any bonuses, premiums returnable and other benefits and sums payable in any other contingency;[70] in respect of premiums or payments to which the section applies and which are payable for securing any benefits in which a capital sum payable on death is not included,[71] the amount on which the allowance is calculated must not exceed £100. Where a bonus is applied in reduction of premium,

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[60] See p. 2.

[61] Act of 1918, s. 32 (1), as amended by Act of 1920, s. 26, see p. 410.

[62] Act of 1918, s. 32, to which sub-s. 9 was added by Finance Act, 1920, s. 26 (7), see p. 380.

[63] See *Barton* v. *Muller* (1922), 8 Tax C. 315.

[64] Act of 1918, s. 32 (3) (e) (i), as amended by Act of 1920, s. 26 (5). A further limitation imposed by s. 32 (3) (f), applied for the year 1939—40 only; for subsequent years, para. (f) is to be omitted: No. 2 Act of 1939, s. 9 (1).

[65] No. 2 Act of 1940, s. 9 (1), applicable to Act of 1918, s. 32 (1) (a), only; see p. 646.

[66] Finance Act, 1920, s. 24 (1), proviso: see p. 9.

[67] Act of 1918, s. 32 (3) (a), as amended by Finance Act, 1920, Third Sched. A further restriction is enacted by No. 2 Act of 1940, s. 9 (2).

[68] During the war, this is to be the total income for the year of assessment or for the year 1938—39, whichever is the higher: Act of 1941, s. 9, see p. 651.

[69] The words "or other payment" seem to be superfluous: see *Turton* v. *O'Brien*, p. 16, note [44].

[70] Act of 1918, s. 32 (3) (c). Where, as in *Gould* v. *Curtis*, [1913] 3 K. B. 84 (see p. 16), £200 is payable if the assured should survive to a certain date, and only £100 if he dies earlier, the allowance will be calculated at the appropriate rate on seven per cent. of £100.

[71] This appears to be the effect intended by s. 32 (3) (d).

the allowance is to be calculated on the net amount paid by the assured.[72]

Life Insurance, etc.: Method of obtaining Relief—The relief allowed by section 32 entitles the person in question to have the tax payable by him reduced by a sum representing tax calculated as has been indicated above.[73] If, however, he has paid the tax without such reduction or has been charged with tax by deduction or otherwise, he is entitled to repayment calculated in the same way), on a claim being made to the Special Commissioners, and on production of the receipt for his insurance premium or similar payment and proof of the facts to their satisfaction.[74] Where the insurance is effected with a registered friendly society[75] and the premiums are made payable for shorter periods than three months, a certificate signed by an officer of the society showing the amount of premiums paid during the year must be produced; penalties are provided for giving or producing a false certificate.[76]

Dominion Income Tax—Provisions intended to relieve a person from having to pay upon any part of his income the full income tax (including surtax) chargeable in the United Kingdom, as well as the full income tax and super-tax chargeable in a "Dominion," are contained in section 27 of the Finance Act, 1920, as amended by the Act of 1927.[77] They apply to cases where a reciprocal arrangement has already been made with a Dominion, as well as those where such an arrangement has not yet been made, but may be made in the future; and, while a general standard of relief from United Kingdom tax is provided at the outset, a provision still more favourable to the taxpayer as regards the United Kingdom tax is also enacted, to apply to cases where the Dominion as yet gives no relief.

These provisions are not confined to self-governing colonies; the word "Dominion" means any British possession or protectorate or any territory for which any Government in the Empire exercises a mandate;[78] and "Dominion income tax"

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[72] *Watkins* v. *Hugh-Jones* (1928), 14 Tax C. 94.

[73] Act of 1918 s. 32 (1) as amended by Finance Act, 1920, s. 26.

[74] S. 32 (2), as amended by Finance Act, 1920, Third Sched. It is doubtful whether the Special Commissioners have power to state a case: *Watkins* v. *Hugh-Jones*; see Chap. 18

[75] See p. 154 [76] S. 32 (7).

[77] Act of 1920, s. 27, Act of 1927, s. 46, Fifth Sched., Part II, see pp 499, 549. By s 17 of the Act of 1930, see p. 555, and by the No. 2 Act of 1945 power is also given to make reciprocal arrangements for exempting from United Kingdom tax profits arising to residents in Dominions or foreign States, and conversely for credits to residents in this country, see p 272 and pp. 775—78, 788 *sqq.*, 798—801; such arrangements may supersede or vary the provisions of the Act of 1920

[78] S. 27 (8) (a), see p. 501. The application of these enactments in regard to the Irish Free State is subject to s. 23 of the Act of 1926, and the agreement, etc., appearing in the Second Sched. to that Act, as amended by s. 21 of the Act of 1928, and the

means "any income tax or super-tax charged . . . in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income tax,"[80] which includes surtax.

This relief extends not only to individuals,[81] but to companies and other bodies: and where these obtained the relief, they were bound in distributing dividends to hand on the benefit to the shareholders: that is to say, they might not deduct income tax at a rate exceeding that of the United Kingdom tax as reduced by this relief.[82] This prohibition applied even where, as in the case of preference shares, the dividend was payable at a fixed rate;[83] and where one company held shares in another company which obtained the relief, and which handed on that relief by making a smaller deduction of tax in distributing a dividend, or by distributing a larger dividend purporting to be "free of tax," the holding company which thus received relief must also hand on the relief to its own shareholders.[84] But if the result of handing on any Dominion tax relief by a company is that the individual has obtained relief at a higher rate than would have been the case if he had himself been charged with tax and claimed relief, the income tax authorities may adjust the matter[85] in connection with the relief with regard to the first £125 of the taxable income.[86]

No relief is granted unless the Dominion income tax has been actually paid, by deduction or otherwise; it is not enough that the tax is payable. The Commissioners of Inland Revenue are to prescribe by regulation what year is to be taken for the Dominion income tax as corresponding to the United Kingdom year of assessment.[87] The Dominion income must also be subject to United Kingdom tax: if it is not so taxable there can be no relief.[88]

The relief ascertained according to the general standard is given by way of diminution of the income tax charged, or if

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further agreement set out in the Fourth Sched. to the latter Act. See *McCalmont* v. *I. R.* (1938), 22 Tax C. 533 (C. A., settled in H. L.).

[80] See Act of 1920, s. 27 (8) (c), as amended by Act of 1927, Fifth Sched., Part II, 2 (iii), p. 549. A royalty paid to a Government and calculated at a percentage on receipts from minerals is not within this definition *Ashanti Gold Fields Corpn.* v. *Merrifield* (1934) 19 Tax C. 52

[81] See Act of 1918, General Rules, r. 1, p. 487, and contrast with s. 27 of the Act of 1920 (see p. 499), ss. 16, 17, 23, 24 of that Act.

[82] Act of 1920, s. 27 (5), see p. 501 But the No. 2 Act of 1940, s. 52 (2), renders this prohibition obsolete, see Supplement, pp. 777, 789

[83] *Sheldrick* v. *South African Breweries Ltd.*, [1923] 1 K. B. 173

[84] *Gold Fields American, etc., Co., Ltd.* v *Consolidated Gold Fields, etc., Ltd.*, [1926] Ch. 338; as to the real nature of a dividend paid "free of tax," see p. 262

[85] S. 27 (3), as amended by Act of 1927, Fifth Sched., Part II, 2 (ii), see p. 500; see also s. 40 (2), proviso, p. 511 This sub-section perhaps covers other special cases also.

[86] See Act of 1927, s. 40 (1), and p. 11

[87] Act of 1920, s. 27 (7) (b), see p. 501

[88] *Rolls Royce, Ltd.* v. *Short* (1925), 41 T. L. R. 620, the principle of that decision holds good, though exactly similar facts cannot occur since the abolition of the three years' average *Assam Rails, etc.* v. *I. R.*, see p. 22.

the claim has not been established before January 1 in the year to which it relates (that being the day when income tax first becomes due[89]) by way of repayment.[90] In either case the whole amount of reduction or repayment is allowed against income tax proper, and not against surtax,[91] even though the relief is based in part on payment of, or liability to, Dominion super-tax.

As relief is in general to be thus obtained, it follows that it cannot also be given by way of excluding from the income estimated for the purpose of United Kingdom tax the amount of Dominion income tax in respect of the same income; and the inclusion of that amount is provided for.[92] But this is not so as regards the additional relief obtainable where there is no reciprocal arrangement with the Dominion.[93]

Dominion Tax : Calculation of Amount of Relief—In general, the relief given is at the rate of one-half the "appropriate rate of" United Kingdom income tax; but where the Dominion rate is one-half, or less than one-half, of the "appropriate rate," the relief is measured by the Dominion rate itself.[94] Thus, if the United Kingdom appropriate rate is 7*s.* 6*d.* in the £, and the Dominion tax 4*s.* 6*d.*, the rate of relief will be 3*s.* 9*d.*; if, however, the Dominion tax is 2*s.*, the rate of relief will be 2*s.* only. The "appropriate rate" of United Kingdom tax and the "Dominion rate" are both calculated by dividing the amount of tax payable in the United Kingdom or paid in the Dominion, as the case may be, by the amount of the total income,[95] or the Dominion income, on which it is charged.[96] The tax payable includes surtax in the United Kingdom and any super-tax in the Dominion; but, as regards surtax, the amount payable in the preceding year is taken, and is divided by the total income of the preceding year.[97] Again, the tax payable in the United Kingdom is ascertained without deducting any relief granted in respect of life assurance premiums[98] or granted under this section; but the relief given in respect of other amounts by deduction of the whole tax payable thereon is to be deducted, and such amounts are to be excluded from total income for this purpose.[99] Where the Dominion tax is charged on an amount other than ascertained actual profits, it

[89] See p. 398.
[90] S. 27 (2).
[91] Act of 1927, s. 42 (6), see p. 544.
[92] Act of 1920, s. 27 (4), see p. 500.
[93] See p. 22.
[94] Act of 1920, s. 27 (1), as amended by Act of 1927, Fifth Sched., Part II, 2 (i), see p. 499.
[95] See Chap. 13.
[96] Act of 1920, s. 27 (5) (d), as amended by Act of 1927, Fifth Sched., Part II, 2 (iv), (v), see p. 502.
[97] See Chap. 14.
[98] See p. 16. Any relief granted under s. 32 (1) (b) in respect of payment or deduction of a sum under an Act of Parliament or under the terms of employment is apparently to be deducted, in arriving at the amount of tax payable.
[99] Act of 1927, s. 40 (1), Fifth Sched., Part II, 2 (iv), see pp. 542, 549; and see pp. 8—15. The further reduction of tax on £165, or a smaller amount, is not affected by Dominion tax relief: see s. 40 (2) and proviso; and see p. 11.

is left to the Special Commissioners to determine the Dominion rate for the purposes of this section.

The rate of relief thus calculated is applied to any part of the income liable to United Kingdom income tax in respect of which Dominion income tax has been paid for the same year; and the result is the amount of the relief to which the person is entitled.[1]

By the phrases "any part of his income" and "the same part of his income," it is apparently not intended to restrict the relief so that it should *always* be calculated on the same amount as that on which the Dominion tax has been paid; the taxable profit may be arrived at upon different methods in the two countries.[2] But "it seems clear that there must be a definite part of income brought into question, and that can only be expressed in a sum of money . . . the words 'the same part of his income' must involve a comparison between two sums of money which prove to be the same. . . . No doubt questions of source, as it has been called, that is, such questions as where the income comes from, are essential to identify, so far as that aspect goes, what is taxed in the United Kingdom with what is taxed in the Dominion, but in addition the income itself, that is, the amount of money, must also be identified. . . . The words 'the same part of his income' are apt to include both elements of comparison and identification."[3]

In the case of a company which applies a part of its profits in paying debenture interest, and deducts United Kingdom income tax in doing so (but not Dominion tax), the relief is calculated upon the whole amount of the profits that are subject to Dominion tax, without deducting therefrom the debenture interest.[4] Similarly, where the debenture interest was excluded from the Dominion assessment on profits, but the company paid Dominion tax on the interest without being able to recoup themselves, the interest had to be added back to the Dominion assessment for the purpose of calculating the relief.[5] But where debenture interest was deducted in arriving at the Dominion assessment, and the company were not liable to pay Dominion tax thereon, it was held that in calculating the

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[1] Finance Act, 1920, s. 27 (1), *see* p. 499. Income on which any of the relief included in s. 40 (1) of the Act of 1927 is granted does not form part of the income for this purpose. Fifth Sched., Part. II, 2 (iv).

[2] See the case next cited, at p. 461, and *I. R.* v. *Australian Provident, etc.*, [1946] 1 All E. R. 236.

[3] *Assam Railways and Trading Co., Ltd.* v. *I. R.* (see below), [1935] A. C. 445, *per* Lord WRIGHT, at 459, 460. It should be noted that in that case specific matters which were included in the United Kingdom assessment under Sched. D, had been excluded from the Indian assessment. The difference was not merely one of figures.

[4] *I. R.* v. *Dalgety & Co., Ltd.*, [1930] A. C. 527; s. 17 of the Act of 1918 has no bearing here.

[5] *I. R.* v. *National Mortgage, etc., Co. of N. Z., Ltd.*, [1936] A. C. 524; an exemption from Dominion tax for the value of land had also to be disregarded.

company's relief, that interest must be excluded, as well as the profits from a tea-garden which had also been excluded from the Dominion assessment.[6]

Additional relief where there is no reciprocal arrangement—In the Report of the Royal Commission[7] it was recommended that the relief given by the United Kingdom should not exceed half the rate of the United Kingdom tax, and that any further relief necessary in order to confer relief amounting in all to the lower of the two taxes should be given by the Dominion. What has been called above the general standard of relief is set up on the assumption of such reciprocity. But where the laws in force in any Dominion make no provision for the allowance of relief in respect of United Kingdom tax, an additional relief is given in this country.[8] The difference between the amount of the Dominion income tax paid or payable and the total amount of the relief granted from United Kingdom tax in accordance with the general standard is deducted in estimating the income for the purpose of the United Kingdom tax; the period to be taken for the purpose of ascertaining the total amount granted is the same period as that on the income of which the assessment to United Kingdom tax is computed. Note that here the income to be charged is itself reduced and not merely the amount of tax leviable on that income; and further, that the amount to be deducted is the difference between Dominion income tax and United Kingdom relief, and not the amount of income on which the Dominion tax is charged.

Dominion Income Tax: Claim for Relief: Appeal—Notice in writing of any claim for relief in respect of Dominion tax by a person resident in the United Kingdom is to be given to the surveyor of taxes, and by a non-resident to the Commissioners of Inland Revenue.[9] No time is limited for giving such notice; and if the claim to relief is not established before January 1 in the year to which it applies, the relief is not lost, but is to be granted by way of repayment.[10] Where the Inland Revenue authorities raise any objection to the claim, the claim is to be heard and determined by the Special Commissioners as if it were an appeal,[11] with all the incidents of an appeal, including the power of either party to require a case to be stated on a point of law. The Special Commissioners in hearing the appeal

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[6] *Assam Railways and Trading Co., Ltd.* v. *I. R.*, [1935] A. C. 445.
[7] Para 70.
[8] Act of 1920, s. 27 (4), proviso (b), see p. 500.
[9] Finance Act, 1921, s. 28, see p. 504.
[10] Act of 1920, s. 27 (2), see p. 500. Any claim to repayment must, however, be made within six years after the end of the year of assessment to which it relates. Act of 1918, s. 41, see p. 416.
[11] See Chap. 18.

have power to determine the rate[12] and amount of relief, and all other incidental questions.

Diminution of Income due to War—If the actual earned income of an individual for 1939—40, and so on to 1944—45 inclusive, is by reason of the war reduced below his earned income as assessed, he is given some relief both from tax at the standard rate, and from surtax.[13] If the actual "earned income" is four-fifths or less of that assessed, the assessment is to be reduced to the actual;[14] if not, the relief is modified.[15] Note that "earned income" receives a special definition,[16] and is here confined to income from trades, professions, etc., carried on by an individual or in partnership, and from offices, employments and pensions charged under Schedule E.

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[12] See p. 21.

[13] No. 2 Act of 1939, s. 11, see p. 632. as extended by Acts of 1940, s. 23; 1941, s. 8; 1942, s. 25; 1943, s. 17; 1944, s. 21; 1945 (No 2), s 19. As to claim, see p. 363.

[14] Sub-s. 1; but see proviso and sub-ss. 4, 5.

[15] Sub-ss. 3, 4, 5.

[16] Sub-s. 7 (a). Pensions outside Sched. E (and many within it) are taxed by deduction which accords with the amount actually paid.

CHAPTER 2

INCOME FROM PROPERTY IN LAND: SCHEDULE A AND ACT OF 1940.

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Income from Property in Land—Formerly the whole of the income charged with tax that was derived from property in land was covered by Schedule A.[1] But the miscellaneous receipts mentioned in No. II of that Schedule,[2] and the concerns carried on with a view to profit[3] mentioned in No. III[4] have been removed from its scope and transferred respectively to Case III and Case I of Schedule D;[5] and rents and royalties payable in connection with such concerns have been brought within those cases.[6] More recently, by the Act of 1940, a charge of tax is imposed upon the excess of certain rents over annual values, which was previously free from taxation,[7] and in the case of other rents, and of mortgage interest and other annual payments charged on the land, provision is made for their complete taxation by way of deduction at the source. The objects of the last-mentioned Act are secured by the inclusion of any excesses thus brought into charge in Case VI of Schedule D,[7] but as these form part of the same income which is in the first instance taxed under Schedule A, it is hoped that it may be convenient to the reader to deal with the new provisions in the present Chapter.

Income derived from the occupation (as apart from the

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[1] *Fry* v. *Salisbury House Estates, Ltd.*, [1930] A. C. 432, *Hoare & Co., Ltd.* v. *Collyer* [1932] A. C. 452; *Croft* v. *Synell Aerodrome, Ltd.*, [1942] 1 K. B. 317: see pp. 71, 117.

[2] See pp. 179, 215

[3] See p. 29.

[4] See Chap. 6, p. 136 *sqq.*, where the list of such concerns is set out.

[5] Act of 1926, s. 28, and Third Sched., see p. 529.

[6] Act of 1934, s. 21, see p. 574. These include payments for the right to withdraw support from surface lands: *I. R.* v. *New Sharlston Collieries, Ltd.*, [1937] 1 K. B. 583, see p. 137.

[7] Act of 1940, ss. 16—17, see pp. 48 *sqq.*

property) of certain kinds of land is charged under Schedule B and considered in Chapter 3.

Tax charged under Schedule A—By the opening words of Schedule A, income tax under that schedule "shall be charged in respect of all lands, tenements, hereditaments and heritages in the United Kingdom, for every twenty shillings of the annual value thereof.";[8] and these must be capable of actual occupation.[9] The word "property" is not to be read in any technical sense so as to restrict the persons chargeable to the owners of the lands, etc.; they include any person who has a right of occupation or of ownership which gives that person the enjoyment of the whole or of part of the annual value.[10]

The term "landlord's property tax" was often applied to the tax charged under Schedule A, or (according to the context) to so much[11] of that tax as is ultimately borne by the landlord, even though the property be occupied by a tenant who pays the tax in the first instance.

The transfer of the concerns above-mentioned to Schedule D does not prevent lands used in connection with them, which form separately assessable units, from being assessed under Schedule A, such as, for instance, the town receiving-offices of a railway.[12]

Where a trade is carried on upon any premises in respect of which income tax is payable under Schedule A, a further assessment is made under Schedule D in respect of the profits of such trade;[13] in computing those profits, allowance is made for the annual value of the premises.[14] The letting out of property (such as flats or offices) to tenants, however, is not a trade, the profits of which can be assessed under Case I of Schedule D;[15] but by the provisions of the Act of 1940 above-mentioned, the lessor may now find himself liable under Case VI to pay or bear tax on a sum in excess of the annual value of the building.[16] Nor does the granting of licences for the use of an aerodrome for

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[8] See p. 454.

[9] General Rule No. I, see p. 454, the sweeping words which follow those quoted lose much of their force by reason of the exceptions. The rules grouped under Nos. II and III no longer form part of Sched. A: see note [5].

[10] *Shanks* v. *I. R.*, [1929] 1 K. B. 342, see especially *per* GREER, L.J., at 361. *I. R.* v. *Muller*, [1930] A. C. 222.

[11] See pp. 38 *sqq.* and cf. *R.* v. *Goodchild* (1857), 27 L. J. M. C. 233, *per* COLERIDGE, J., at 242.

[12] The transfer brings this matter within the rules applying to the annual value of business premises, considered p. 125. As to what forms a separate unit for Sch. A purposes, see p. 27.

[13] *St. Andrew's Hospital* v. *Shearesmith* (1887), 19 Q. B. D. 624, see p. 256; *Comm* v. *Rotunda Hospital Governors*, [1921] 1 A. C. 1, see p. 69.

[14] See p. 126.

[15] *Fry* v. *Salisbury House Estate, Ltd.*, above, and see p. 42, followed, as to tied houses let by a holding company to brewers, *Whelan* v. *Alfred Lyney, Ltd.*, [1936] A. C. 203, see p. 71.

[16] See p. 48 *sqq.*

landing, repairing aircraft and so on, constitute a trade; and here the recent provisions just cited are not applicable.[17]

Exemptions and allowances conferred upon charitable and other bodies in respect of tax under Schedule A are dealt with in Chapter 13; and the new capital allowances in Chapter 7.

General Rule of Schedule A—By the general rule for estimating the annual value of lands, etc., "the annual value shall be understood to be:—

"(1) The amount of the rent by the year at which they are let, if they are let at rack-rent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

"(2) If they are not let at a rack-rent so fixed, then the rack-rent at which they are worth to be let by the year."

The period of seven years referred to in connection with agreements for "letting at rack-rent" is (in the generality of cases) the seven years ending immediately before the commencement of the "preparatory year," that is, the year in which the annual value is determined.[18]

There is no general direction as to the unit of lands, etc., that is to be taken for assessment purposes. But, speaking generally, any lands, etc., to be assessed as a unit must form a single property and be in a single occupation, although the property may be that of joint owners or the occupation that of joint occupiers. The specific direction for separate assessments in the case of a house "divided into distinct properties" distinctly occupied, like many other of the rules in Schedule A, is merely an obvious application of this unexpressed principle.[19] An exception is, however, made where different apartments or tenements in a house or building are separately occupied; the house or building is to be assessed as a whole,[20] but the annual value of each apartment or tenement is to be ascertained separately, and the sum of these values is to be taken as the annual value of the whole.[21]

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[17] *Croft* v. *Sywell Aerodrome, Ltd.*, [1942] 1 K. B. 317 (C. A.).

[18] Finance Act, 1930, s. 27 (2), s. 28 (1), (2), and First Sched., Part II, r. 1, see pp. 559, 562. As to the effect of clause (1) of the General Rule, see p. 35; as to the preparatory year and certain exceptional cases, see pp. 37, 38.

[19] Sched. A, No. VII, r. 12, see p. 464.

[20] No. VII, r. 8 (c), see p. 463; *Thompson* v. *I. R.*, 1935 S. C. 788; 20 Tax C. 303, see p. 42.

[21] *Williams* v. *Sanders*, [1927] 2 K. B. 498, *Towle* v. *Improved Industrial Dwellings Co., Ltd.*, [1931] 1 K. B. 263; *Stevenson* v. *I. R.*, 1935 S. C. 788; 20 Tax C. 303, see p. 42. The cost of repairing a common lift is not to be deducted *Pearl Assce. Co.* v. *I. R.*, [1943] 1 All E. R. 624 (C. A.). As to allowances, see *Ambleton* v. *Norwich Union* (1927), 137 L. T. 415, p. 33

Actual Occupation—In order to be assessable under Schedule A the property must be "capable of actual occupation";[22] and occupation for this purpose has the same meaning as for purposes of poor rate.[23] A sewer provided by a local authority in the discharge of its public duties and without any possibility of profit was held to be assessable,[24] and although such sewers are now specifically exempted, the same principle would doubtless be applied to any other municipal undertaking which could be described in similar terms.

Where minerals have not yet been won, although included in a mining lease, the lessees are not the occupiers of the minerals;[25] and it may be doubted whether unwon minerals are "capable of actual occupation."

Occupation by the Crown or for Crown purposes—The Crown is not liable to income tax, and consequently no income tax is leviable under Schedule A in respect of premises used for the purposes of the general administration of the country,[26] even though they be provided by county or other authorities and not by the State at large.

In the leading case upon the subject[27] Lord BLACKBURN said: "There may well be expressions in an Act imposing a duty or tax on the subject such as to show that the intention of the Legislature was to impose the duty on some property belonging to the Crown. But I do not think it made out that there is any such intention shown in the Income Tax Act . . . The administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, . . . by the constitution of this country these functions do, of common right, belong to the Crown." And Lord WATSON said:[28] "The cases in which it has been decided that the actual occupiers of assize courts are exempt from poor-rate, as being within the privilege of the Crown, are decisions of equal authority in a question as to exemption from income tax."

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[22] See p. 26, note [9]

[23] *Coomber* v. *Berks JJ.* (1883), 9 App. Cas. 61, *Back* v. *Daniels*, [1925] 1 K. B. 526, *Mitcham Golf Course Trustees* v. *Kreuse* (1937), 21 Tax C. 239; *Dawson* v. *Counsell* (1938), 22 Tax C. 149, and the case next cited.

[24] *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Benstead*, [1907] A. C. 264, see pp. 29, 293. For the exemption, see Act of 1921, s. 34, p. 475.

[25] *Hill* v. *Gregory*, [1912] 2 K. B. 61, see p. 38, payments for the right to remove dross or spoil are not assessable: *Roberts* v. *Bolkhaven's Exors.*, 1925 S. C. 635, see p. 236; *Shingler* v. *Williams* (1933), 49 T. L. R. 221, see p. 180.

[26] If premises are occupied by the Crown under a lease, tax on the rent paid may now be obtained by assessing the lessor under s. 15 or s. 16 of the Act of 1940, or by deducting tax against him under s. 17, as the case may be, see pp. 48—53.

[27] *Coomber* v. *Berks JJ.* (1883), 9 App. Cas. 61, at 66, 67. See also *Tunnicliffe* v. *Burtisland Overseers* (1888), 20 Q. B. D. 450.

[28] 9 App. Cas. at 77.

It will be seen from that decision that the numerous poor-rate cases[30] upon this matter are conclusive also as to income tax. The actual hereditament with which that case was concerned consisted of assize courts and a county police station (with accommodation for constables as well as prisoners) provided by county justices out of county rates.[30] In an earlier case, a dwelling-house so provided in which a police constable was compelled by the terms of his appointment to live and which communicated with a police station, was held not to give rise to the liability to income tax.[31]

On the other hand, it has been held that this exemption does not extend to municipal buildings (except such part of them as is used for a burgh court), baths, and a weights and measures office,[32] and that where a part of such buildings was used only exceptionally and accidentally for the purposes of a Court of Justice, that part was not exempt.[33] Income tax is payable in respect of a county lunatic asylum, because provision for the custody and maintenance of pauper lunatics is not the exercise of a prerogative of the Crown, nor the discharge of a duty which appertains to the public government of the county.[34]

A specific rule imposes on officers of the Crown who are paid in part by the privilege of occupying a house, tenement or apartment belonging to the Crown (other than apartments in royal palaces) the liability to income tax on the annual value thereof.[35]

Property not carried on for Profit - A list is set out at p. 134 of various classes of property which are enumerated in the rules of No. III. and which have now been transferred from Schedule A to Schedule D. But although a particular property may *primâ facie* answer a description appearing in these rules, it is not included in No. III unless it is carried on for profit;[36] and, therefore, any such property which is not carried on with a view to profit is still chargeable under Schedule A. Consequently, a municipal slaughter-house where the dues were, in accordance with a local Act, so limited as to produce no surplus above the total of the current expenses and the interest on the cost of construction,[37] and a waterworks vested in trustees to supply water to a city, where the charges made were not sufficient to

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[29] See Ryde on Rating. [30] *Coomber* v. *Berks JJ.* (1883), 9 App. Cas. 61.
[31] *Bent* v. *Roberts* (1877), 3 Ex. D. 66, see p. 38.
[32] *Adam* v. *Maughan* (1889), 27 S. L. R. 64; 2 Tax C. 541.
[33] *Brown* v. *Smith* (1901), 4 F. 31; 4 Tax C. 435.
[34] *Reay* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484.
[35] Sched. A. No. VII, r. 11, see p. 483. See *per* Lord BLACKBURN in *Coomber* v. *Berks JJ.*, 9 App. Cas. at 66; and contrast *Tennant* v. *Smith* p. 245.
[36] *Ystradyfodwg, etc., Main Sewerage Board* v. *Bennett*, [1907] 1 K. B. 480, affd., [1907] A. C. 264, see p. 28, see also *per* Lord MACMILLAN in *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. at 469. See pp. 74 - 76.
[37] *Harris* v. *Edinburgh Corporation*, 1907 S. C. 1233; 5 Tax C. 271.

cover current expenses, but the balance was met out of trust funds,[38] were held to be chargeable under the General Rule No. I, and would, therefore, still be within the scope of Schedule A. Sewers for public health purposes are the subject of a specific exemption from tax,[39] but this does not prevent sewage purification works (not carried on for profit) from being assessed under Schedule A.[40] It is important in this connection to note that a public undertaking may be carried on with a view to profit, although the profits when made may be compelled by statute to be devoted to public purposes.[41]

A quarry of stone, etc., which is worked by a landowner for the purposes of his own estate is probably chargeable under Schedule A as not being carried on for profit.[42]

Although they may be carried on for profit, brickfields are not mentioned in No. III. and are not of a like nature with any of the properties enumerated in rule 3; they were therefore assessable under the General Rule,[43] and are still within Schedule A.

Annual Value—The effect of the opening words of Schedule A read together with the General Rule is that in respect of any land, etc., within the purview of Schedule A income tax is charged upon its annual value, as there defined. The phrase "annual value," whether in income tax Acts poor rate Acts, succession duty Acts, or wherever else it appears in connection with rating or taxation, means the same thing, that is, a rack-rent[44] or the rent which a tenant can afford to give after retaining out of the value of the gross produce of the land sufficient to afford him a profit and interest on his capital, and to enable him to pay tenant's rates and taxes. "Rack-rent is only a rent of the full value of the tenement or near it."[45] It has been described as the amount of profit derived from the property by the landlord as such;[46] but this statement requires modification for income tax purposes, because the annual value under the General Rule is ascertained without making any deduction

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[38] *Shaw* v *Larkfield Conduct Lands Trustees* (1920), 7 Tax C. 597. See also *Glasgow Water Commissioners* v. *I. R.* (1875), 2 R. 708, *Miller* v. *Glasgow Water Commissioners* (1858), 13 R. 489, p. 74.

[39] Act of 1921 s. 34, see p. 507.

[40] *Summers* v *Renfrew County Council*, 1925 S. C. 119, 9 Tax C. 216.

[41] *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 81, see p. 75.

[42] See *per* COZENS HARDY, L.J., [1907] 1 K. B. at 500, quarries of four different kinds are enumerated in rule 1 of No. III. p. 455.

[43] *Edmonds* v *Eastwood* (1858), 27 L. J. Exch. 209, see p. 36. This point was not definitely decided in that case; but the judgments would make it very difficult to argue the contrary.

[44] In *Re Elves* (1858), 28 L. J. Exch. 46, *per* WATSON, B., at 47, 48.

[45] 2 Blackstone, Comm. 43.

[46] *Edmonds* v *Eastwood* (1858), 27 L. J. Exch. 209, *per* WATSON, B., at 214.

for repairs,[47] insurance[48] or renewals. "Annual value is but an hypothetical sum arrived at in a certain manner" . . . It "is not an actual but an hypothetical sum."[49] Generally speaking, it is ascertained on similar principles to the gross value for rating purposes, which is defined as "the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rentcharge, if any . . .";[50] but where there has been a "letting at rack-rent" within the seven years' period indicated by the General Rule (as now amended),[51] the rent reserved is to be taken as the "annual value," although fixed for a term and not from year to year.[52]

Subject to the modification as to repairs, insurance and renewals, the numerous decisions upon "gross" or "rateable value" for rating purposes are generally in point with relation to "annual value" under the General Rule of Schedule A.[53] It is not proposed to deal in this book with those decisions, which may be more profitably studied in *Ryde on Rating*, but only with the cases which have been decided upon annual value for income tax purposes.

No account is to be taken of the value of process machinery, which is excepted from rating valuations.[54]

As regards sporting rights, however, the rating standard is not altogether applicable; the matter is discussed in relation to Schedule B.[55]

Tithe Redemption Annuities.—A tithe redemption annuity or a substituted annuity charged in respect of any land under the Tithe Act, 1936, is deductible from the annual value of that land under Schedule A for any year of assessment, to the extent

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[47] Certain allowances for repairs are, however, made by way of reductions or repayments: see pp. 32—35. The increase of rent permitted by s. 2 (1) (d) of the Rent Restrictions Act, 1920 (10 & 11 Geo. 5, c. 17), forms part of the annual value, though granted to meet the increased cost of repairs. *Biddle* v. *Morris*, [1924] 2 K. B. 490.

[48] *Turner* v. *Carlton*, [1909] 1 K. B. 932.

[49] *R.* v. *Special Commissioners of Income Tax, Ex p. Essex Hall*, [1911] 2 K. B. 434, *per* BUCKLEY, L.J., at 441; *per* KENNEDY, L.J., at 444. As to existing rents, see pp. 35, 36.

[50] See Rating and Valuation Act, 1925, s. 68, which re-enacts earlier definitions. As to the exclusion of tenants' rates and taxes and compositions for tithe, etc., from annual value for income tax, see Sched. A, No. IV, rr. 1, 2 and 10, pp. 424, 425, and *Reigate Corporation* v. *Cattermole*, [1940] 4 All E. R. 243, p. 136. Scottish landlords are put in a similar position in this respect by Sched. A, No. V, r. 4 (see p. 439). *I. R.* v. *Scottish Central Electric, etc.*, 1925 S. C. 260; 13 Tax C. 331 (see p. 127).

[51] See p. 27, note [19].

[52] As to the effect of clause (1) of the General Rule, see p. 35.

[53] See *per* Lord BLACKBURN in *Collanes Iron Co.* v. *Black* (1881), 6 App. Cas. at 330—334. But the actual rating valuation is not binding for income tax purposes: *Walker* v. *Brisley* (1900), 4 Tax C. 254. See, however, *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417.

[54] By the enactments referred to in sub s. 3 (d) of s. 22 of the Act of 1936, which section renders inapplicable the decision in *Crossford* v. *R. S. Hudson, Ltd.* (1935), 19 Tax C. 434. See p. 128.

[55] See p. 60.

of five-sixths of each instalment payable in that year; but if any instalment is not paid or paid only in part, the deduction is diminished accordingly.[66] Five-sixths of each instalment is for all purposes of the Income Tax Acts "deemed to be a payment by way of interest."

Drainage and Embankment Rates and Expenses: Land Tax—Deductions are specifically allowed for drainage, fencing and embankment rates and assessments,[67] and for expenditure privately incurred (on an average of twenty-one years) in the making or repairing of seawalls or embankments necessary for the protection or preservation of lands against encroachment of the sea or of tidal rivers.[68] This provision has been construed very strictly so as to exclude any deduction for constructing embankments whose main object was to convert salt marshes into good agricultural land by excluding tidal water; the decision may perhaps be supported on the ground that the expenditure was of a capital nature, but hardly so upon the words of the rule itself.[69] No allowance is made for any private expenditure upon embankments against non-tidal rivers, or for the maintenance of even the arterial drainage of agricultural land.[70]

Certain drainage authorities levy rentcharges in commutation of liabilities to repair embankments or maintain drainage channels; these rentcharges are not "rates" but would probably be held to be "assessments" within the meaning of the rule first cited.[71]

A deduction is also allowed for unredeemed land tax.[72]

Repairs, etc.—There are two distinct rules under which an allowance is made in respect of lands charged under No. I of Schedule A to meet the cost of repairs.

One of these rules is general, and applies to all lands so charged.[73] The allowance is not in terms made dependent on the necessity for repairs. The assessment is directed to be reduced "for purposes of collection"; but the limitation imposed by the words quoted is more apparent than real. The effect is that the taxpayer is only liable to pay Schedule A tax on the reduced amount; the reduced amount is deemed to be

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[66] Tithe Act 1936, ss. 3, 10, 13, 46, see p. 589.
[67] Sched. A, No. V, r. 1 (f), see p. 459.
[68] No. V, r. 1 (g), but see Income Tax Act, 1945, s. 33 (6), p. 718.
[69] *Hesketh* v. *Gray* (1888), 21 Q. B. D. 444, decided under Income Tax Act, 1842, s. 37.
[70] The whole of these deductions would be made for rating purposes: *R.* v. *Adames* (1832), 4 B. & Ad. 377; *R.* v. *Hall Imm.* (1864), 34 L. J. M. C. 17, but these decisions do not apply to income tax.
[71] Cf. *Owen* v. *Newport Union*, [1909] A. C. 35.
[72] No. V, r. 1 (e); such a deduction is not admissible for rating purposes: *R.* v. *Adames*.
[73] Sched. A, No. V, r. 7, see p. 459.

his income from the property for the purpose of any relief,[66] and therefore for the purpose of surtax;[65] and a tenant-occupier under a "short lease" can only deduct against his landlord tax on the reduced amount.[66]

An owner can deduct against a mortgagee, chargee or annuitant[67] tax on the full amount of the assessment without taking account of this reduction.[68]

In the case of "lands," where the assessment includes a farmhouse or farm buildings, or where it includes no house or building, the Schedule A assessment is reduced by $\frac{1}{8}$th[69] unless it is already more than $\frac{1}{8}$th below the rent.[70] In other cases, where the owner is occupier or is chargeable as landlord,[71] or where a tenant is occupier and the landlord has undertaken to bear the cost of repairs, the reduction where the assessment does not exceed £40 is $\frac{1}{8}$th, where it exceeds £40 but does not exceed £100 the reduction is $\frac{1}{5}$th, and where it exceeds £100 the reduction is $\frac{1}{8}$th part of the excess *plus* £20; where a tenant is occupier and has undertaken to bear the cost of repairs the reduction is not to exceed a similar amount, but the assessment is not thereby to be reduced below the rent actually payable; if, however, the assessment exceeds £40, there must be a reduction of at least £10.[72] Where the assessment is already by more than the authorised amount below the rent, there is no reduction, whoever is the occupier.[73]

In addition to the general reduction of assessment, the second of the rules referred to conveys relief in respect of certain classes of property, and covers other matters besides repairs.[74] The assessment is not reduced, but repayment is allowed of excess tax paid. The repayment may be claimed in the way appropriate to any allowance or deduction;[75] and may also be obtained by a declaration to the inspector of taxes, if the inspector is satisfied of its correctness.[76] This additional relief

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[64] S. 19, see p. 407, and also p. 298. Cf. also Act of 1940, s. 15, p. 637.

[65] See p. 329.

[66] No. VIII, r. 1, see p. 43. As to the amount of deduction for repairs of business premises in estimating trade profits, see p. 128.

[67] See pp. 48, 52.

[68] Sched. A, No. VIII, r. 11, see p. 465. "Owner" here includes the immediate landlord of a tenant-occupier. *Egyptian House Properties, Ltd.* v. *Maynard*, [1934] 1 Ch. 681: see p. 48.

[69] No. V, r. 7 (1) (a). [70] Rule 7 (2).

[71] See p. 42. Where the house or building is let in different apartments or tenements separately occupied, the aggregate annual value of the whole is treated as the amount of the assessment, and the reduction calculated accordingly: *Norwich Union, etc.* v. *Embleton* (1927), 137 L. T. 415, 11 Tax C. 681; *Toole* v. *Improved Dwellings Co., Ltd.*, [1931] 1 K. B. 263.

[72] Rule 7 (1) (b) (i) and (ii), with proviso, as substituted by Act of 1923, s. 28, see p. 459; note the extended right of appeal given by s. 28 (4) of the Act of 1923. The amended rule is continued in force to 5th April, 1947, by Act of 1942, s. 37: see p. 666.

[73] Rule 7 (2), as so amended.

[74] Rule 8.

[75] See p. 312.

[76] Rule 8 (5): see *R.* v. *Kingsland Commrs.* (1922), 8 Tax C. 327, p. 358.

further reduces the "total income."[77] Even if this relief has been obtained, it does not apparently reduce the amount of tax deductible by an owner against a mortgagee, chargee or annuitant.[78]

This rule applies to any "land"—that is, agricultural land —"inclusive of farmhouses and other buildings (if any)," the Schedule A assessment of which is not more than $\frac{1}{3}$th below the rent, and to any "house" to which rule 7 applies.[79]

The relief is given where the cost to the owner of maintenance, repairs, insurance and management has, on an average of five years, exceeded $\frac{1}{3}$th of the Schedule A assessment in the case of "land," and the reduction authorised by rule 7 (3) in the case of "houses";[80] but any expenses otherwise allowed as a deduction for income tax purposes cannot be claimed again.[81] The comparison between expenses and assessment may be made for the whole of the land or houses in any estate which is managed as a whole;[82] and the relief given is confined to the repayment of tax under Schedule A, paid in respect of the same "estate";[82a] Schedule A tax in respect of another "estate," and Schedule D tax, cannot be repaid on this account.[83] "Maintenance" includes replacement of farmhouses, farm buildings, cottages, fences and other works, where such replacement is necessary to maintain the existing rent;[84] and also additions and improvements (made under compulsion of statute or bye-laws and without therefor increasing the rent) to farmhouses, farm buildings, or cottages.[85] "Cost of management" does not include compensation for disturbance or improvements, paid to an agricultural tenant; nor expenses of litigation in connection therewith.[86] It may include advertising expenses.[87] There are both general and specific prohibitions against including in the computation payments made for securing indemnification against war risks, and such expenditure on making good war damage as is repayable.[88] The average is computed on the

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[77] Act of 1918, s. 19, p. 407. See Chap. 14.

[78] No. VIII, r. 4 (1), second proviso, allows the owner to deduct only the tax actually paid, but is silent as to any amounts repaid. So also is Act of 1940, s. 17, see p. 638.

[79] No. V, r. 8 (3), read with r. 7 (2), as amended by s. 25 of the Act of 1922, see pp. 459 460. s. 25 does away with the restrictions based on the annual value of houses.

[80] No. V, r. 8 (1), as amended, see p. 4 0

[81] Rule 8 (3), as amended by s. 25 of the Act of 1922. Some part of the expenses may, for instance, have been deducted in estimating income from trade: see p. 127. See also Act of 1940, s. 16 (1) (g), p. 638.

[82] No. V, r. 8 (4). [82a] *Scottish Heritable Trust* v. *I. R.* (1945), 24 A. T. C. 151.

[83] *Crompton* v. *Campbell*, 1925 S. C. 124. [84] Rule 8 (2).

[85] Act of 1924, s. 25, see p. 460. War risk payments of certain kinds are not included: No. 2 Act of 1940, s. 12 (2) (b), p. 647.

[86] *I. R.* v. *Wilson's Executors*, 1934 S. C. 244; 18 Tax C. 465.

[87] *Southern* v. *Aldwych Property Trust, Ltd.*, [1940] 2 K. B. 266.

[88] No. 2 Act of 1940, s. 12, see p. 647, Act of 1941, s. 17 (2) (b), see p. 686; War Damage Act, 1943, s. 113 (1), see p. 675. The same prohibitions apply to deduction from trade profits, and the above provisions are summarised in connection therewith: see p. 116

five years preceding the year of assessment; years ending on March 31 are taken unless the owner and inspector agree to another date; the Income Tax Act, 1945, extends this relief.[89]

Loss by Flood or Tempest—Where land is let at a rent without fine or premium, and by reason of flood or tempest loss has been sustained on growing crops or stock on the lands, or any part of them has been rendered incapable of cultivation for any year and the owner has consequently made an abatement of rent, the General Commissioners may make a corresponding reduction in the Schedule A assessment. A similar reduction may be made where the lands are in the occupation of the owner and any such loss is sustained on them.[90] Penalties are provided in the case of fraudulent claims.[91]

Existing Lease or Agreement not Conclusive—Clause (1) of the General Rule[92] is logically superfluous. The rent fixed by an agreement commencing within the seven years' period is to be taken as the annual value, if the lands "are let at rack-rent"; if they are not, the matter is left at large by clause (2). The assessing authorities must therefore decide for themselves in each case whether the rent reserved is a rack-rent. Moreover, they cannot as a matter of common sense refuse to consider any existing agreement, although made before the period of seven years referred to[92] in clause (1), for such an existing agreement is obviously relevant to the question what is the rack-rent at which the property is worth to be let by the year, though it may be entitled to less weight than a more recent agreement. In practice, however, the rule makes it difficult to establish in any case (what may very well be the fact) that the true annual value is less than the rent reserved by an agreement of the kind described. Where the rent reserved by such an agreement is a rent which varies in different years, it is not correct to take the rent payable in any one year as the annual value, but the price "commercially paid for the annual possession of the property" must be ascertained by averaging the rents, or otherwise.[93] Where the landlord undertakes to pay the rates or to pay for certain services (as in the common case of flats), the property is not let at a rack-rent, and clause (1) does not apply.[94]

Existing agreements have been held not to be conclusive in the case of a letting by a mother to her son;[95] in the case of a letting of a public-house by a brewer to a tied tenant, though

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[89] Sched. A, No. V, r. 8 (6). See p. 170.
[90] Rule 9 (1), (2). As to Sched. B, see p. 59 [91] Rules 10, 11.
[92] Set out, p. 27; the seven years' period to be taken is varied by the Finance Act, 1930, First Sched., Part II, r. 1: see p. 512.
[93] *I. R.* v. *Dickson's Exors.*, 1928 S. C. 752.
[94] *Norwich Union, etc.* v. *Embleton*, see p. 36.
[95] *Stocks* v. *Sulley* (1899), 1 F. 1020, 4 Tax C. 98

the latter paid the same prices for liquor as the brewer's other customers;[96] and in a somewhat obvious case where the so-called "rent" included annual payments for the use of horses, coaches, and harness.[97]

Where a premium is paid for a lease, it is proper to add a sum representing the annual amount required to replace the premium at the end of the term, together with interest on the amount of the premium, and if the tenant has covenanted to do what would ordinarily be the landlord's repairs, the average cost of those repairs.[98] An additional rent payable in lieu of an insurance premium is to be included in the rack-rent.[99]

In a lease of brickfields, reserving a surface rent of £17 : 10s., a fixed "brick rent" of £100, and an additional royalty or brick rent of 2s. per thousand bricks after the first million the whole of these three kinds of rent added together were held to make up the annual value.[1]

The rules under Schedule A contain various subsidiary directions on specific points with regard to the ascertainment of annual value.[2] Among these, attention may here be drawn to the provision for the exclusion from annual value of any public local rates, taxes, or assessments which by law are charged upon the occupier, but which have been *bonâ fide* paid by the landlord and of any composition for tithes so paid,[3] and to the rule for the assessment as an entire house or tenement, of a house or building let in different apartments or tenements, and occupied by two or more persons severally.[4]

Air-raid Protection Works.—In estimating the annual value of any building, any room or other part added or included in the building solely for the purpose of air-raid protection shall be disregarded, so long as it is not occupied or used for any other purpose, any other structural alterations or improvements made solely for that purpose are also to be disregarded. But this relief is not to apply if the building or part of it is let, and the rent or other consideration for the lease is greater by reason of the room or part, or the work, referred to.[5] It is not to affect the depreciation allowance for mills, etc.[6]

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[96] *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417.

[97] *Campbell* v. *I. R.* (1879), 7 R. 82, approved in *Loughnan* v. *Dolphin Brewery, Ltd.*, [1936] A. C. 404, see p. 118.

[98] *Dawes* v. *Abbott* (1927), 11 Tax C. 576.

[99] *House and Property Investment Co., Ltd.*, v. *Kneen*, [1928] 2 K. B. 274.

[1] *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209.

[2] Those grouped under No. IV (see p. 456) are very obscure, and some of them seem superfluous.

[3] Sched. A, No. IV, rr. 1, 2. Rule 10, which is somewhat obscure, should be read so as not to conflict with rule 1 (a). The amount to be excluded is the amount actually paid by the landlord or owner in the preceding year: *Norwich Union, etc.* v. *Embleton* (1927), 137 L. T. 415; 11 Tax C. 681.

[4] Sched. A, No. VII, r. 8 (c), see p. 42.

[5] Act of 1928, s. 17 (1), (2), see p. 598 [6] Sub-s. (4).

If there is a separate unit of assessment[7] intended to be occupied and used solely for air-raid protection, and not in fact occupied and used for any other purpose, an exemption from Schedule A tax is granted in respect of that unit, provided there is no letting of the whole or any part of the unit.

Quinquennial Revaluation—The Finance Act, 1930, directs that there shall be a quinquennial revaluation for the purpose of Schedule A. The annual value adopted for any property for the year 1936—37 is taken to be the annual value in each of the intervening years to 1940—41 inclusive; but for the war, the year 1941—42 would again have been a "year of revaluation," and so on.[8] The assessment in the year of revaluation is "so far as may be" to be made on the annual value of the property for the preceding year, called the "preparatory year."[9] But if any person can prove that the annual value of his property has decreased in "the year of revaluation" as compared with "the preparatory year," he is entitled to have his assessment reduced accordingly.[10]

Outside the County of London, the determination of the annual values is to be commenced by calling for returns in the preparatory year;[11] in London, use may be made of the returns furnished to a rating authority or an assessment committee.[12] Both in and out of London, the preliminary work of revaluation is to be commenced in the "preparatory year"; though it may apparently be carried somewhat further outside London than within.[13] But in either case it would appear that the annual value is to be determined as for the preparatory year in respect of any property which existed in that year; though this is more definitely stated as regards the rest of the country,[14] than as regards London.[15] The procedure for assessment, and the rights of appeal, will be considered in Chapters 15—17.

The above provisions do not prevent the making of an additional assessment[16] in respect of any particular property for the year of revaluation after the expiry of that year if, for instance, it is subsequently "discovered" that the grant of a lease at a higher rental took place in the preparatory year or the year of revaluation.[17] In addition to appeals relating to

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[7] Sub-s. (3), see p. 27.

[8] Act of 1930, s. 27 (1), (2), (3), see p. 559 (postponed by Act of 1940, s. 25, see p. 642).

[9] S. 28 (2), s. 27 (2). The effect of the words "so far as may be" in s. 28 (2) and rule 3 of Part I of the First Sched. is obscure, presumably they are inserted to cover new properties coming into existence or into occupation in the "year of revaluation."

[10] S. 28 (2), proviso.

[11] S. 28 (1), First Sched., Part I.

[12] Act of 1930, s. 32, see p. 560. Part I of the First Sched. does not apply in London: s. 28 (1), proviso.

[13] See s. 28 (1) and First Sched., Part I.

[14] First Sched., Part I, r. 3, see p. 562, s. 28 (2); but see note [9], above. As to the effect of Part II, r. 1, see p. 27, note [18].

[15] S. 28 (2); First Sched., Part II, r. 1. See last note.

[16] See p. 375.

[17] *Kleiman* v. *Stone*, *Hills* v. *London Freehold, etc., Co* (1936), 20 Tax C. 398, following *Owstry* v. *Dunham* (1916), 85 L. J. K. B. 417, see p. 36.

the year of revaluation, an appeal may be brought in any year of assessment between one "year of revaluation" and another; such an appeal will be determined according to the circumstances of the year of assessment with regard to which it is brought.[18]

Tax charged upon the Occupier—The property tax assessed under No. I of Schedule A is charged (but for some exceptional cases[19]) on the occupier for the time being;[20] and "any person having the use of any lands or tenements" is deemed to be the occupier.[21] These words do not mean that a lessee who has not actually entered but is entitled to do so and to take that use when he chooses, is deemed to be the occupier.[22] In spite, therefore, of the presence of rule 2, the word "occupier" for the purpose of Schedule A bears the same meaning as in the law of rating, just as the word "occupation" does.[23]

"The term . . . appears to involve possession of a permanent character, such that trespass could be brought by the occupier with the enjoyment of a benefit from the land. . . . Exclusive occupation does not mean the power of excluding everyone else from the land, but does mean the exclusive power of using the rights given him in the soil."[24] Thus, a potato grower who hires land from a farmer for a season with the sole right of growing potatoes upon it is an occupier of the land, though the farmer has contracted to plough and to supply part of the labour and may also be an occupier.[25]

If a house is vested in trustees, and a particular person resides in the house, either because he has a right to do so under the settlement, or because the trustees allow him to do so in the exercise of their discretion, then that person so long as he resides there is the occupier: it is immaterial that he has no power to let the house.[26] In the case of a servant or official who is compelled by the terms of his employment to reside on premises provided by the employer, and who resides there for the purposes of the employer, the latter is the "occupier,"[27] unless he uses the premises (through the servant) for the

[18] Act of 1923, s. 26 (1), see p. 521, which seems to supersede the decision on this subject in *Turner* v. *Carlton*, see p. 31. This provision is not repealed by the Act of 1930. Cf. the preceding note

[19] See p. 42.

[20] Sched. A, No. VII, r. 1, see p. 462

[21] Rule 2.

[22] *Hill* v. *Gregory*, [1912] 2 K. B. 69; see p. 28.

[23] *Back* v. *Daniels*, [1925] 1 K. B. 536, see p. 29; a mortgagee in possession who is in actual occupation is assessed and charged as an occupier No. VII, r. 13 (1), but this would have been obvious without any specific provision See, however, *Bertram* v. *Wightman*, note [20].

[24] [1925] 1 K. B. 542, 543, *per* SCRUTTON, L.J.

[25] *Back* v. *Daniels*, see p. 58.

[26] *Shanks* v. *I. R.* [1929] 1 K. B. 342; *I. R.* v. *Miller*, [1930] A. C. 222. These cases arose in connection with total income: see Chap. 14.

[27] *Bunt* v. *Roberts* (1877), 3 Ex. D. 66, see p. 29; *Sutton's Hospital Governors* v. *Elliott*, [1922] 2 K. B. 1. See also *Tennant* v. *Smith*, [1892] A. C. 150, p. 245, and *Read* v. *Cattermole*, [1937] 1 K. B. 612, p. 247.

purposes of the Crown.[28] "Occupier" of course includes any owner who is in actual occupation; it is not the equivalent of "tenant"; and, if the decision in *Bertram* v. *Wightman*[29] is correct, "occupier" includes an owner, where the land is not let and is left empty and unused. A disposition which is set aside by a trustee in bankruptcy does not retrospectively affect the question who was the occupier before it was set aside.[30]

Although, as will be seen,[31] a tenant-occupier is given a right to deduct the tax paid by him against his rent, the tax is the debt of the occupier; but the payment of his debt to the Crown discharges the occupier from so much of his debt to his lessor.[32] The only effect of the words excepting property tax, which are so commonly found in covenants by tenants to pay rates, and taxes, is to keep alive this right.[33]

The Crown, however, has the right to recover against an "immediate lessor" tax which is payable under Schedule A and has not otherwise been recovered; but only to an amount equal to tax on the rents payable to an immediate lessor under any "short leases" under which the land or any part of it is let.[34]

A servant of the Crown in occupation of a house, tenement, or apartment belonging to the Crown, is assessable in respect of it.[35]

Unoccupied Lands—There is, however, a further enactment that the tax "shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not"[36]; the special provision of this rule in regard to any "house" which is or becomes unoccupied has been changed by the Act of 1940, and is dealt with below under "Empty Houses." Here the words "charged on" are used with a different meaning from that of the same words in Rule 1 of No. VII; the person is "charged" in the sense that he is commanded to pay the tax, the land only in the sense that the property in it gives rise to the liability, and that its value affords the measure of the tax to be paid.[37]

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[28] See *Coomber* v. *Berks JJ.*, p. 28.

[29] [1936] 2 K. B. 521. In that case, *Hill* v. *Gregory* (see note [32]) was not followed, and it seems doubtful whether it can be reconciled with *Back* v *Daniels* (see note [31]), and even with *Coomber* v. *Berks JJ.*

[30] *Joly* v. *Pinhoe Nurseries, Ltd.* (1936), 20 Tax C. 271; the case arose under Sched. B, see p. 57.

[31] See p. 43.

[32] *Beaufort (Duke)* v. *I. R.*; *I. R.* v. *Anglesey (Marquess)*, [1913] 3 K. B. 48 (C. A.); *Northumberland (Duke)* v. *I. R.*, [1920] A. C., *per* Lord Wrenbury, at 834; *Drughorn* v. *Moore*, [1924] A. C. 53, see p. 44. The reasoning, and perhaps the decision, in *Re Farquhar*, [1943] 2 All E. R. 781 (C. A.) do not seem to accord with the other cases cited in this note.

[33] *Per* Lord Cave, L.C., [1924] A. C. 57.

[34] Act of 1941, s. 13, see p. 654 and s. 15 (3). The terms quoted are defined in Act of 1940, s. 13, see p. 636.

[35] See p. 30.

[36] No. VII, r. 4, see p. 462.

[37] There appears to be no intention of creating a "charge" in the sense of real property law; contrast the language of the statute discussed in *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 73; and see s. 162 (1) (p. 438), which speaks of the "premises in respect of which the tax is charged." For the effect of that sub-section, see p. 400.

It is submitted that (apart from "houses") the effect of Rule 4 as far as non-occupation is concerned is merely that the Inland Revenue authorities need not inquire before making their assessment for the year, whether any of the lands, tenements and hereditaments assessed are occupied or not.[38] If there is no occupier in fact, there is no one liable either to pay the tax in the first instance or to bear it by deduction; for Schedule A makes no person liable to pay except the occupier;[39] and Rule 7 of No. VIII, which authorises deductions by a tenant occupier against his landlord for any tax which he has paid and which ought to have been paid before he entered applies only to tax which ought to be or to have been "paid by a former tenant or occupier,"[40] *not* being a person who has "ultimately" to "bear" the tax.[41]

"The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation."[42] An occupier who quits is, however, "liable for the tax payable in respect of the period up to the date of . . . quitting . . . so far as such tax falls to be ultimately borne by him";[43] if he was the owner, he is liable for the whole tax for that period, and if he was a tenant at a rent less than the annual value, he is liable for so much of the tax as he would have no right to recover from his landlord.[44] "Liable" in this proviso means liable to the Inland Revenue, for, in case of a difference with the landlord or the succeeding tenant, the General Commissioners are to settle the proportions due and levy them from the proper persons.[45] The next proviso makes it clear that there is no power to levy upon an occupier for the time being any tax which ought to have been levied upon and ultimately borne by a former occupier.[46] It cannot be read so as to show (by exclusion) that a levy is authorised in every other case, *e.g.*, where there was no preceding occupier.[46]

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[38] It would be unsafe to draw any inference to the contrary from the presence in rule 4 of a specific provision with regard to "houses." In *Bertram* v. *Wightman* (see note [39]) LAWRANCE, J., disapproved the argument in the text because of the definition of "occupier" in rule 2.

[39] No. VII, r. 1, see p. 36, also r. 3, and *Beaufort (Duke)* v. *I. R.*, [1913] 3 K. B. 48; and *Northumberland (Duke)* v. *I. R.*, [1920] A. C. 825, *per* Lord WARRINGTON, at 834. The word "occupier" is used above, of course in the sense given to it by rule 2, as to which see notes [34] and [35]. S. 13 of the Act of 1941 (see note [34]) applies only where tax is "payable under Schedule A."

[40] See p. 41. As to the charges under Sched. D, placed upon lessors by the Act of 1940, see pp. 48—53.

[41] No. VII, r. 3 proviso (b), see p. 462, taken (with little alteration) from the proviso to s. 35 of the Act of 1853, its bearing is difficult to understand without its former context, which is now repeated in No. VIII, r. 7, see p. 42.

[42] No. VII, r. 3.

[43] Rule 3, proviso (a).

[44] See p. 42.

[45] (General Rules, r. 23 (1)), see p. 491.

[46] See the remarks as to the interpretation of the Income Tax Acts in Chap. 1, p. 6. A contrary decision was given under s. 35 of the Act of 1853 in *Reading* v. *Chue* (1866), 3 Tax C. 625, at Nisi Prius, but this case (it is submitted) has no application under the Act of 1918

Empty Houses—As regards an unoccupied "house," the position is different. Rule 4 of No. VII directs the General Commissioners upon appeal to discharge the tax in respect of the period during which any house is unoccupied.[47] But this direction no longer applies if the house is held under a "short lease" and the rent for the period of non-occupation remains payable to the "immediate lessor."[48] In such a case the person liable to pay the rent may deduct the tax against that lessor as if he were a tenant occupier, subject to the conditions which ordinarily affect that right of deduction.[49] Now the person liable to pay such a rent is charged with tax only if he is "the occupier for the time being";[50] he is not therefore obliged to pay the tax unless he has returned into occupation. If he has paid the tax in accordance with that obligation, then he may deduct tax as above stated; and it would appear that he may do so if he has paid it voluntarily; but unless he has paid the tax he cannot deduct it.[49] The power to recover from an immediate lessor tax which is payable under Schedule A applies where the person liable to pay rent is also liable to pay that tax but has not done so.[51] If, however, the net Schedule A assessment exceeds the rent, there is no power to recover tax on the excess for the period of non-occupation, either from the tenant or the lessor.[52]

Where there is no rent payable under a "short lease" to an "immediate lessor," Rule 4 is still in force. In that rule as well as in the amending section, "house" probably means a dwelling-house with its appurtenances; it *may* include a warehouse or counting-house; it can scarcely include any and every kind of building.[53]

Change of Occupier—An incoming occupier (whether owner or tenant) who immediately succeeds an occupying tenant is liable for the tax due from that tenant, so far as that tenant could have recovered it from his landlord and with the same right of recovery; he is not liable for any part of the tax which that tenant could not have recovered, as for instance, if he occupied at a rent less than the annual value, nor is an incoming occupier who succeeds an owner in occupation liable for any tax due

[47] See p. 482, there is nothing to limit the time or manner of appealing.
[48] Act of 1940, s. 14 (1), see p. 637. The terms used are defined in s. 13 and considered pp. 49, 50 *sqq.* A mortgagee in possession is included in s. 13 (2).
[49] Sched. A, No. VIII, r. 1, see pp. 43–47.
[50] See p. 39.
[51] Act of 1941, s. 13, see p. 39.
[52] Act of 1940, s. 14 (1), proviso, Act of 1941, s. 13 (1), proviso, see pp. 637, 654.
[53] In *Reading* v. *Clear*, *supra*, r. 4 seems to have been treated as having no application to a counting-house, stores, yard and workshop, but this may have been because there had been no "appeal." Several different terms for buildings appear in rr. 8—12; but no argument can be based on analogy or contrast between rules so vaguely worded and so loosely connected. As to non-occupation of an apartment or tenement, where the landlord is charged for the whole house, see p. 43.

from that owner.[56] A tenant occupier, who being required to do so has paid tax which ought to have been paid by a former occupier under this rule, may recoup himself against his landlord.[56]

The proportions of tax due respectively from the occupier for the time being and any former occupier (including his executors, etc.) are to be fixed and levied by the General Commissioners in case of difference, and their decision is final.[58] Where the occupation is divided after the making of the assessment, those Commissioners are also to determine the proportions due.[57]

Landlord Charged in certain Cases—Where a dwelling-house with its appurtenances and the land occupied therewith is of less annual value than £10 and is occupied by a tenant, where any lands and tenements are let for less than one year,[58] and where a house or building is let in different apartments or tenements separately occupied, the landlord is to be assessed and charged.[59] The last branch of the rule applies to a block of flats or dwellings;[60] the house or building is treated as a whole under Schedule A; but the landlord, though he cannot also be assessed under Case I of Schedule D in respect of a trade carried on by means of letting, may have to pay or bear an additional charge under Case VI.[61]

An assessment in any of the cases described is valid although made on the wrong person; and the tax may be recovered from the person who is the landlord on the 1st January in the year of assessment; but if he is not named in the assessment, he is to have 21 days' notice before proceedings can be taken or distraint levied against him, and has a right of appeal.[62] In the case of the divided house or building the tax may alternatively be levied from the occupiers; and they can recoup themselves out of any subsequent payment of rent.[63] Where

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[56] No. VII, r. 3, and proviso (b) thereto; read with No. VIII, r. 7, see pp. 40 and 45. Although there are no words expressly to the purpose, it cannot be intended that if the former owner was entitled to recoup himself for part of the tax against, say, a mortgagee, that fact should cast any liability upon his successor. As to liability of heirs, executors, etc., in case of death, see p. 276.

[56] No. VIII, r. 7, see p. 45.

[58] General Rules, r. 22 (1) (b) and (2), see p. 491.

[57] No. VII, r. 5, see p. 462.

[58] This includes a weekly tenancy although it may have lasted for many years: *Ellis, Ltd.* v *Jackson*, 1940 4 All E. R. 409.

[59] No. VII, r. 8, see p. 463. In this rule "landlord" means the "immediate lessor": *Thompson* v *I. R.*, 1935 S. C. 788. As to the annual value in the last case, see *Williams* v. *Sanders*, [1927] 2 K. B. 498, *Stevenson* v. *I. R.*, 1935 S. C. 788; p. 27; and as to deductions for repairs, see *Embleton* v *Norwich Union* (1927), 137 L. T. 415 (p. 33), and the case next cited.

[60] *Towle* v. *Improved Industrial Dwellings Co., Ltd.*, [1931] 1 K. B. 263.

[61] *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432, see p. 26. Act of 1940, ss. 15—17, see p. 48 *sqq.*

[62] Act of 1941, s. 12 (1), and First Sched., Part I, see pp. 662, 662. The tax is payable on or before 1st January. See also p. 370, note [61].

[63] S. 12 (3) (4) and First Sched., Part III; see para. 3 and proviso to para. 1. Rule 9 of No. VIII appears to be superseded by the above enactments, but is not repealed.

the tax had been so levied and recouped against a landlord who was himself a lessee, it was held that the latter could not in his turn deduct the tax thus borne by him, when paying rent to his lessor; but this decision proceeded upon a very narrow construction of No. VIII, r. 9.[64] In the other cases mentioned, the tax can be levied from the tenants only in default of payment by the landlord; and they can recoup themselves only out of the next payment of rent.[65] In any of the cases, the tax may be recovered by means of a notice served upon the landlord or other person receiving rent to pay it over to the collector.[66] If any apartment or tenement in the divided house or building has been unoccupied during the whole or any part of a year, relief or repayment of tax can be obtained on application.[67]

The landlord or the person immediately entitled to the rent is also charged where the house is let to the accredited minister of a foreign State.[68]

Apart from the above, where the landlord or immediate lessor of any lands, houses or buildings, makes a request in writing on or before July 31 in any year, the Commissioners may, if they think fit, assess him directly, and continue to do so until he cancels the request by notice in writing;[69] on his default they may distrain on the premises or property,[70] as well apparently as on the goods of the landlord. If the occupier pays the tax to avoid distraint, he may recoup himself out of any subsequent payment of rent.[71]

Occupier's Right to Deduct Tax: Short Leases—As the occupier is in general the person assessed, and liable to pay the tax under Schedule A, he may (if he is a tenant under a "short lease") deduct and retain the tax paid by him against his landlord,[72] or against a mortgagee in possession, who is not in actual occupation,[73] so far as it is proportionate to the rent reserved, if the annual value exceeds the rent, the tenant cannot deduct tax on the excess; and where the rent exceeds the annual value assessed, he can only deduct tax on that annual value.[74] The rent must be an actual money rent, and

[64] *Thorley* v. *Payne*, [1943] K. B. 306, as to r. 9, see the last note
[65] No. VII, r. 8, proviso; No. VIII, r. 8, see pp. 463, 465.
[66] Act of 1941, s. 12 (2) and First Sched., Part II, see pp. 653, 663; there is a penalty of £50 for non compliance.
[67] Finance Act, 1930, s. 21, see p. 557 and Chap. 18, p. 394.
[68] No. VII, r. 10 see p. 463.
[69] Rule 9 (1) (2).
[70] Rule 9 (3), as to distraint, see p. 400.
[71] No. VIII, r. 10, see p. 465.
[72] Sched A, No. VIII, r. 1, and second proviso, see p. 464, read with Act of 1940, s. 17 (1) (2), see p. 638. See also note [52] on p. 39. As to what is a "short lease," see p. 49; deduction by an occupier under a "long lease" is now regulated by the General Rules, see p. 52.
[73] No. VII, r. 13, see p. 464.
[74] Cf. *Rosedale* v. *Fryer*, [1922] 2 K. B. 303, p. 47. The annual value for this purpose will be reduced by the five-sixths of the instalments of a tithe redemption annuity deducted in accordance with the Tithe Act, 1936, s. 13 (6), see note [19], p. 48, as well as by the repairs allowance, see p. 32. For the charge of tax where there is an excess of rent, see pp. 50, 51.

the tenant has no right to deduct or recover the tax paid where a peppercorn rent is reserved, even though he has, in pursuance of a covenant, spent money on repairs.[76]

A rent paid with the tax deducted is discharged as if it had been paid in full to the landlord.[76] The tenant must have paid the tax before he can deduct it[77] and must produce the receipt, if required.[78] The fact that the landlord is entitled to exemption (or to any allowance or deduction) does not affect the tenant's right to deduct.[78]

For the purpose of deduction, the tax is to be calculated at the rates in force during the period when the rent was accruing due: in Scotland, as regards the rent due for the period ending May 15, the rate of tax in force at the commencement of the period is to be applied.[79]

The deduction must be made out of the first payment on account of rent made after the payment of tax.[80] but if, on the passing of the Act imposing the tax for any year, there is found to have been a failure or deficiency in deduction, it may be made up out of the next payment of rent after the passing of the Act, or recovered as a debt.[81] Apart from this, there is no right to deduct subsequently, or to recover by action.[82]

If, however, the rent is paid in arrear, there is nothing to prevent a deduction of tax corresponding (of course at the proper rates) to the whole of the rent so paid; the right to deduct is not confined to the tax for the income-tax year in the course of which the rent is paid.[83] Payment of the tax is a good defence in part to an action to recover rent;[84] and a receiver, who has covenanted to pay four years' arrears of rent due from the company, fulfils his own obligation by paying

[76] *Drughorn* v. *Moore*, [1924] A. C. 53.

[76] No. VIII, r. 2 as amended by Act of 1926, s. 20: see *Beaufort (Duke)* v. *I. R.*, [1913] 3 K. B. 46, p. 39, and *North London, etc., Co* v *Moy*, [1918] 2 K. B. 439, decided before the above amendment was made.

[77] *Barnes* v. *Kyffin*, [1916] W. N. 166. Where this would prevent him from recouping the whole tax against the next payment of rent, he may pay the tax by instalments. Act of 1938, s. 16, see p. 597.

[78] *Sandman* v *Ambler* (1854), 24 L. J. Ex. 155, the landlord must claim repayment he desires it, see pp. 292, 362.

[79] No. VIII, r. 1, and first proviso thereto: see next paragraph. This rule is not affected by s. 39 (1) of the Act of 1927, see proviso (a), p. 542.

[80] Rule 1, *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556, see p. 206.

[81] S. 211 (2), see p. 447. This does not appear to protect a tenant-occupier who is not liable to any further payment of rent after he has paid the tax: see *British Photomaton Co., Ltd.* v. *Playfair*, p. 47.

[82] *Denby* v. *Moore* (1817), 1 B. & Ald. 123; *Cumming* v *Bedborough* (1846), 15 M. & W. 438; but if the landlord has distrained for the whole rent, the tenant may recover by action an amount equal to the tax paid by him: *Graham* v. *Tate* (1813), 1 M. & S. 609, see also *Lamb* v. *Brewster*, p. 46.

[83] *Kirk* v. *Cunnington*, [1921] 3 K. B. 637.

[84] *Pinckler* v. *Prentice* (1812), 4 Taunt. 549, *Franklin* v. *Carter* (1845), 14 L. J. C. P. 241. For a case in which tax was allowed to be deducted on payment into Court, see *Baker* v. *Davis* (1813), 3 Camp. 474.

those arrears less the sums paid by the company for tax under Schedule A.[86]

A tenant occupier who has been required to pay and has paid tax which ought to be or to have been paid by a former occupier (whether owner or tenant) is entitled to deduct and retain the amount paid out of any subsequent payment of rent;[87] in this case he is not limited to make his deduction against the next payment of rent; it is not clear for what reason.

Arguing upon rule 7 of No. VIII, it has been held that *à fortiori* a continuing occupier is entitled, where he has failed to pay rent for one year, to deduct the tax paid for that year, against a payment of rent for the next year.[87] This reasoning appears to ignore the language of rule 1, and to read that rule as subject to rule 7; it is submitted that the tax paid for the period during which rent in arrear accrued due can (except in the case of a subsequent tenant not liable for that rent) only be deducted against that rent when paid, and not against the rent accruing due in any subsequent period.[88]

A statutory provision directing a tenant to make some payment (other than income tax) and deduct a corresponding amount from his rent does not alter the effect of the provisions above discussed; and therefore a tenant of licensed premises is entitled to deduct the tax on the whole of the rent payable by him, although he has, in compliance with the Licensing Acts,[89] paid a portion of that rent to the Inland Revenue as compensation charge.[90]

Any difference between landlord and tenant with regard to the amount of tax to be deducted is to be settled by the General Commissioners, and their decision on that question is final;[91] but they have no power to decide whether the payment is or is not an annual sum from which the payer is entitled to deduct tax.[92] A landlord refusing to allow the deduction is subject to a penalty of £50.[93]

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[86] *Re Sturmey Motors, Ltd.*, [1913] 1 Ch. 16; in the same case it was also decided that the receiver was entitled to make a deduction for income tax paid by himself, although he had already made a payment of rent subsequent to the payment of tax.

[87] No. VIII, r. 7, see p. 42. Where an outgoing tenant has paid the tax and handed the receipt to the incoming tenant (his assignee) it may be inferred that the latter has in effect paid the tax: *Clennell* v. *Read* (1816), 7 Taunt. 50.

[87] *Re Hayman, Ltd. (No. 2)*, [1917] 1 Ch. 545, the receiver's occupation continued that of the company. An agreement made by the receiver was construed in the same way as that in *Re Sturmey*, see note [86].

[88] The decision in *Kirk* v. *Cunnington* (see p. 44) goes no further than this: and the language used by Lush, J., [1921] 3 K. B. at 642, appears to support the view above suggested.

[89] See Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21 (3).

[90] *Hancock* v. *Gollard*, [1907] 1 K. B. 47.

[91] General Rules, r. 22 (1) (a) and (2), cf. p. 42; *Ecclesiastical Commrs.* v. *Sackville Estates, Ltd.*, [1937] 2 K. B. 600.

[92] *Fife's (Duke) Trees.* v *Wimpey & Co., Ltd.*, 1943 S. C. 377.

[93] R. 23 (1), see p. 491; *Att.-Gen.* v. *Shield* (1868), 28 L. J. Ex. 49; see, however, *Lamé* v. *Brewster*, p. 46.

As the tax deducted by a tenant forms part of the rent, the tax was held not to be deductible in arriving at the "annual rental of the settled land" for the purposes of section 13 (iv) of the Settled Land Act, 1890.[94]

Where in consequence of war damage, a short lease comes to an end or the rent ceases to be payable or is reduced, and the lessee is thus unable to deduct the whole or part of the tax under Schedule A, he can obtain relief so that he pays only such tax as he is able to deduct together with tax on any excess of the annual value (for the part of the year for which tax is payable) over the rent payable by him.[95] The tax thus repaid or remitted[96] is to be recovered from the lessor, or other person who would have been entitled ultimately to receive the rent and to suffer the deduction.[96]

Agreements to the Contrary void—An agreement for the payment of rent without deduction of tax is void;[97] that is, the particular stipulation is void, but the rest of the agreement is enforceable.[98] A tenant has been held entitled to recover against his landlord income tax paid by him in accordance with a covenant that he should pay his rent in full and that his landlord would reimburse him,[99] but it does not follow that the landlord would be allowed, under such an agreement, to recover the rent in full, if the tenant chose to disregard it and to pay the rent after deduction of tax.

The provision in question applies to marriage settlements and so forth;[1] but not to wills.[2]

Right to deduct Tax against Superior Rent: Short Leases—Persons holding under "short leases," as defined in the Act of 1940,[3] against whom tax has been deducted by their tenants in paying rent,[4] or who have paid tax as "landlords,"[5] are entitled to deduct tax against their own lessors and to retain the tax

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[94] *In re Fife's Settlement Trusts*, [1922] 2 Ch. 348; see now Settled Land Act, 1925, Third Sched., Part I (xxv), proviso.

[95] Act of 1941, s. 16 (1), (3), see p. 654; the above seems to be the solution of the apparent paradox in sub s. (1).

[96] Sub s. (2); presumably the assumption underlying these provisions is that the persons affected will obtain compensation under the War Damage Act, 1941 or 1943.

[97] General Rules r. 23 (2), see p. 492. This provision in its bearing on annuities, etc., is discussed p. 208.

[98] *Gaskell* v. *King* (1809), 11 East, 165; *Fuller* v. *Abbott* (1811), 4 Taunt. 105, see also *Readshaw* v. *Baldwin*, *ibid.* 57, and the cases cited on pp. 206—208. The Court will correct an agreement in which this rule has been overlooked by the parties: *Jervis* v. *Howle and Talke Collieries, Ltd.*, [1937] 1 Ch. 67.

[99] *Lamb* v. *Brewster* (1879), 4 Q. B. D. 607.

[1] *Att. Gen.* v. *Shield*, *supra*; *Floyer* v. *Banks* (1863), 32 L. J. Ch. 610; cf. *In re Viscount Portman*, [1924] 2 Ch. 6; and see pp. 191, 206.

[2] *Lovat* v. *Leeds* (*Duchess*) (1862), 31 L. J. Ch. 503, *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41; see p. 191.

[3] S. 13 (1), see p. 48.

[4] Either under No. VIII, r. 1 (see pp. 43—46), or under r. 4 itself.

[5] See pp. 42, 43.

so deducted.[6] Any such person, if he is himself a tenant, is prohibited from deducting against rent more than he has actually paid in respect of those lands,[7] or more than his under-tenant has deducted in paying rent to him.[8] But the deduction is to be made at the standard rate of tax for the year in which the amount payable becomes due;[9] accordingly, in paying rent in a year of assessment in which the rate of income tax has been increased, such a "tenant or occupier" would appear to be entitled to deduct tax at the higher rate, although he has up to that time paid or borne tax only at the lower rate prevailing in the previous year.[10] In Scotland, however, as regards any payment due for the period ending May 15, the tax is to be calculated at the rate in force at the commencement of the period.[11] As in the case of a tenant-occupier, the deduction operates as a discharge of the amount deducted.[12] Where a company is itself a tenant, and has sublet, a receiver for the company (if he is not in occupation, and if the company's tenant has not paid or deducted tax) cannot deduct tax against the company's lessor.[13]

The deduction may be made on paying rent to a mortgagee or creditor in possession under a mortgage or heritable bond; in any settlement of accounts, the mortgagor or debtor is to be credited with the tax due on the interest which the mortgagee or creditor has paid to himself out of the rents.[14]

Apart from rents payable under "short leases" the deductions formerly sanctioned by No. VIII of Schedule A are now regulated by General Rules 19 and 21;[15] but although these appear to cover the same ground, they are not applicable to deduction against rents so payable.[16] On the other hand, rule 4 of No. VIII in so many words authorises the person who deducts tax to retain it; but its operation has been limited so as to allow retention of the tax only where the income out of which the

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[6] No. VIII, r. 4 (1), (2), see p. 461, corresponding to tenth rule, No. IV of Schedule A in the Act of 1842, with some alteration of arrangement.

R. 4 (1), second proviso; but if he is the owner he may for this purpose disregard the reduction allowed to him for maintenance, etc. under r. 7 of No. V: see No. VIII, r. 11, p. 465. As to the meaning of "owner," see *Egyptian House Properties, Ltd.* v. *Maynard*, p. 48, note [1].

[7] *Rosedale* v. *Fryer*, [1922] 2 K. B. 303, see p. 43. If the tax has not been paid or borne before the last payment of rent under the lease becomes due, the tenant cannot recover the tax against his landlord. *British Photomaton, etc., Ltd.* v. *Henry Playfair, Ltd.*, [1933] 2 K. B. 506, at 518.

[8] Act of 1927, s. 39 (1), see p. 642; as to "standard rate," see p. 2.

[9] Proviso (b) to s. 39 (1) of the Act of 1927 preserves the first proviso to r. 4 of No. VIII but does not mention the second. As to s. 211 (2), see p. 44, note [81].

[10] R. 5, see p. 465, and see pp. 39, 44.

[11] *In re Piccadilly Theatre, Ltd.* (1935), 14 A. T. C. 12.

[12] No. VII, r. 13, see p. 464; *per* Lord DAVEY in *London County Council* v. *Att.-Gen.*, [1901] A. C. 41.

[13] Act of 1940, s. 17 (2), see p. 638.

[14] *Rosedale* v. *Fryer*, [1922] 2 K. B. 303, in the K. B. D.; the judgment of SCRUTTON, L.J., in the C. A. proceeded on other grounds. See also *Hill* v. *Gregory*, [1912] 2 K. B. 70, 71; and see p. 38.

payment is made is directly connected with the payment, and has itself borne tax either directly or by way of deduction.[16]

It has been held that the right of deduction is not affected by the fact that the annual value of the land is "reduced for purposes of collection";[17] and that an intermediate lessor may make his deduction as if he had paid or borne the tax on the full annual value, although his landlord is liable under the lease for a part of the repairs.[18] But where five-sixths of instalments of a tithe redemption annuity have been deducted from the annual value, the deduction of tax must be calculated according to the annual value as thus reduced.[19]

As to settlement of differences, as to the penalty for refusal to allow deduction, and as to the invalidity of any agreement against deduction, the same provisions apply as in the case of a tenant-occupier.[20] The provision for relief in case of short deduction owing to war damage is also applicable.[21]

Rents and Annual Payments: The Act of 1940.—Until recently certain receipts connected with property in land were not charged with income tax, because they were outside the scope of Schedule A as laid down in *Fry* v. *Salisbury House Estate, Ltd.*;[22] moreover, it was thought that in many cases the annual values upon which the Schedule A assessment was based were less than rents, mortgage interest, or other annual payments payable in respect of the lands concerned, so that the recipient of these did not have to bear tax (by deduction) commensurate with his receipts.[23] In order to bring all these receipts fully within the charge of tax, certain provisions were enacted in the Act of 1940, which deal separately with three groups of rents or annual payments.[24] The first two groups consist of rents under "short leases," in regard to which the system of deduction of tax is left undisturbed, as well as the main charge under Schedule A, but an additional charge is imposed under Case VI of Schedule D upon a certain excess.

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[16] *Att.-Gen.* v. *London County Council*, [1907] A. C. 131, see p. 200; see also *London County Council* v. *Att.-Gen.*, [1901] A. C. 26; the tenth rule of No. IV of the Act of 1842 was the predecessor of r. 4 of No. VIII in the Act of 1918. Now that rule 4 is confined to short leases this point has lost much of its importance: as to local authorities, see No. 2 Act of 1945, s. 21, p. 196.

[17] See p. 32.

[18] *Egyptian House Properties, Ltd.* v. *Maynard*, [1934] 1 Ch. 681. This decision, it is submitted, can hardly be supported upon the construction of r. 4 of No. VIII; it was also based on the ground that the intermediate lessor was an "owner" within r. 11: see p. 47, note 7.

[19] See Tithe Act, 1936, s. 13 (6), p. 580, the deduction must be "a sum allowed by the Commissioners" within the meaning of r. 4 of No. VIII.

[20] General Rules 22 and 23, see p. 46.

[21] Act of 1941, s. 16, see p. 654.

[22] [1930] A. C. 432, see p. 26.

[23] See pp. 43, 46, as to rents.

[24] Act of 1940, s. 13 (1), see p. 635. Rents and annual payments connected with land outside the United Kingdom, or with land not "chargeable" to Sched. A tax, are not affected: see pp. 26, 29, and Chap. 13, but as to "charity lands" the position is hardly clear: see note [61] on p. 284. For new capital allowances, see Chap. 7.

differently calculated in each group.[25] The third group comprises rents paid under "long leases" as well as mortgage interest and other annual payments charged upon lands, such as annuities, rentcharges and so on;[26] as regards this group also the main charge of tax on the annual value of the land under Schedule A is not disturbed, but the system of deduction of tax which prevails under Schedule D is now applied, and the rent or other payment is charged under Case VI, unless it already falls within Case III or any other Case.[27]

The distinction between the two kinds of lease is an arbitrary one. A lease granted for a term of fifty years or less is a "short lease." A lease for a term exceeding fifty years, even though it be terminable earlier at the option of the lessee only, is a "long lease"; but if the lessor has such an option, it is a "short lease," and also if the term is determinable after a death or marriage.[28] A mortgage is not a lease for this purpose; if the mortgagee of a leasehold interest, however, is in possession or has put in a receiver, the new provisions are applicable to him as they would be to the mortgagor.[29] An agreement for a lease is included, if the term to be covered has begun; as well as any tenancy.[30]

The provisions above broadly indicated will now be considered somewhat more in detail. Any person entitled to any rent or other annual payment in respect of land, or receiving such if belonging to another person, may be required under penalties to give particulars for purposes of sections 14—17.[31]

Short Leases: First Group—The first group of "short leases" (dealt with in section 15) are those relating to a single unit of assessment for purposes of Schedule A, or to a part of such a unit, provided that the rent under the lease is paid to the "immediate lessor" of the whole unit and that no part of the unit is included with any land outside the unit in any "short lease" under which the rent is payable to him.[32] There is no general direction in the Acts as to what land should form a "unit of assessment"; where a house or building is not "divided into distinct properties" but is let in different apartments or tenements, severally occupied, under one landlord, it is to be assessed and charged as one entire house or tenement;[33] the annual value of each apartment or tenement must, however,

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[25] Ss. 15, 16, see p. 637; these are mainly designed to do away with the effect of *Fry* v *Salisbury House, Ltd.*, above.

[26] S 17, see p. 638. [27] As to the effect of this charge, see p. 52.

[28] Definitions in s. 13 (1), read with sub-s. 3, see p 636 No question arises as to how much of the term is unexpired.

[29] *Ibid.*, read with sub-s. 2. [30] S. 18, see p. 639, forms are to be prescribed.

[31] S 15 (4), see p 637; definition of "unit of assessment" in s. 13 (1), see p 636.

[32] See pp. 27, 42; Sched. A, No. VII, rr. 5 (c), 12, see pp. 463, 464; see also observations on s. 16, p 51.

be ascertained separately in the first instance.[33] Whether each "apartment or tenement" is to be treated as forming a unit of assessment, or whether the whole house or building is to be so treated, section 15 will be applicable to the "short lease" of each flat or office in such a building, for each will either be, or form part of, a single unit of assessment.[34] In such a case, and wherever there are separate tenancies or occupations of different parts of the premises, the "immediate lessor" is a lessor whose interest extends to the entirety, and who has not let the entirety, provided his interest is not a reversionary one;[35] in any other case, a lessor whose tenant is occupying or entitled to occupy the entirety.[36]

Under Schedule A, as has been seen, an immediate lessor (as here defined) has either to pay the tax on the amount of the assessment "as reduced for the purposes of collection" by the repairs allowance, or to suffer a deduction of tax by his tenant in receiving rent; subject to his being himself entitled to deduct tax in paying rent to a superior landlord. He may also have to pay tax on a further sum, to be charged under Case VI of Schedule D. In the first place, an annual value is to be determined afresh by reference to the rent payable to him under the "short lease" and to the other terms of that lease;[37] if for instance he bears the cost of services which he is bound to render to his tenant, or pays the rates, allowance must be made on that account; or there may have to be an addition in respect of a premium, or of a tenant's covenant to repair.[38] If any part of the unit is occupied by the lessor, a portion of the annual value as actually ascertained for the purposes of Schedule A is to be attributed to that part, and added in.[39]

When the new annual value has been reached by this process, the appropriate repairs allowance is to be deducted from it.[40] If the result is greater than the actual amount of the existing Schedule A assessment (again reduced by the appropriate repairs allowance) the immediate lessor is to be charged under Case VI with tax on the excess; unless the rent which he himself pays under a "short lease" or "short leases" is greater than that actual amount, in which case he is to be charged only on the excess over that rent. If there is no excess over the actual

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[33] See note [21] on p. 27.

[34] S. 15 (4), unless the exception in para. (d) should happen to apply.

[35] S. 13 (1), see p. 635, definition of "immediate lessor" (a), read with proviso. (He may have parts in his own occupation or naket.)

[36] *Ibid.*, (b).

[37] Or leases; s. 15 (1), see p. 637. Such rent includes compensation paid under Defence Act, 1939: *Mellows v. Buxton Head*, 1944, 1 All E. R. 223 (C. A.), see p. 630.

[38] See pp. 35, 36. Some of the relevant rules of Sched. A are there referred to, the amount allowed for rates will be that paid in the preceding year, see p. 36, note [3]; and contrast s. 16 (1) (c).

[39] S. 15 (2); the lessor's occupation may be, *e.g.*, by means of a caretaker or porter.

[40] See p. 32.

assessment (as so reduced) or over the rent, there is no additional charge.[41]

If he is assessed with any such additional charge, his allowance for maintenance, etc., under Schedule A will be increased to accord with the annual value as thus newly determined.[42]

Short Leases : Second Group—Section 16 relates to "short leases" extending into more than one unit of assessment; and also to those which relate to a single unit if the rent is not payable to the immediate lessor of the whole unit or if the whole or some part of the unit is also included with land outside the unit in a "short lease" under which rent is payable to that immediate lessor.[43] This section clearly applies, among other "short leases," to a short lease of a group of tied houses,[44] or of a series of multiple shops.

A lessor,[45] then, is chargeable under Case VI with tax on any excess which rent receivable by him under a short lease or short leases as above described shows over an aggregate of certain amounts relating to the same land.[46] The composition of this aggregate commences with the amount of the Schedule A assessment (as reduced by the repairs allowance) on which he is liable to pay tax, or to have tax deducted against him, *or* (if this is greater than the above), the amount of the rent or rents which he himself is liable to pay under any short lease or short leases of the land.[47] To either amount there may, according to the circumstances of each case, have to be added one or more of the following items: (c) if the lessor is liable to pay tenant's rates, under agreement or by law, the amount of rates borne by him for the year of assessment;[48] (d) "any relief allowed" on the burden falling on the lessor in that year in respect of the various outgoings specified in rule 1 of No V of Schedule A, and of the owner's rates in Scotland referred to in rule 4;[49] (e) five-sixths of each instalment of an annuity under the Tithe Act, 1936, or of such part of it as he has borne, if allowable in the year of assessment;[50] (f) the cost in that year of services rendered or goods provided, otherwise than for maintenance

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[41] S. 15 (1). The "actual assessment" takes no account of any relief given under Act of 1930, s. 21 (see p. 43), for an unoccupied apartment or tenement.

[42] S. 15 (3), see pp. 33, 34.

[43] S. 16 (2) (a) (b) (see p. 638), read with s. 15 (4) (c) (d), see above, as to the meaning of "unit of assessment" and "immediate lessor."

[44] See *Whelan* v. *Alfred Loney, Ltd.*, p. 26, note [15].

[45] He need not, as in the preceding section, be the "immediate lessor" as defined in s. 13.

[46] S. 16 (1), see p. 638.

[47] This appears to be the effect of paras. (a) and (b) of s. 16 (1).

[48] Not for the preceding year as under s. 15 (1).

[49] See pp. 454, 459, and pp. 31, note [50], and 32. It is not apparent what is meant by the word "relief" in para (d); this word is indeed used in r. 4 of No. V, but does not appear in r. 1. It would seem that the amount on which relief is given is intended; for otherwise para. (d) would be out of line with the other paras. of sub-s. 1.

[50] See p. 31.

or repairs, under the obligation of the lease and without separate payment therefor;[51] (g) the cost of maintenance, repairs, insurance and management on an average of the preceding five years, over and above any part of that cost on which relief has been otherwise given to him.[52]

Long Lease Rents : Mortgage Interest and other Payments—Rents payable under "long leases" are treated by section 17 of the Act of 1940 in a wholly different manner, and deduction of tax in paying them is now regulated by the General Rules.[53] A tenant under a long lease (whether he is the occupier of any of the land demised by the lease or not) is entitled, if he pays the rent "wholly out of profits or gains brought into charge," to deduct and retain the tax thereon; if it is not wholly so paid, he must deduct the tax, and must account to the Revenue; and he will be assessed and charged under Case VI of Schedule D with tax on so much of the payment as is not paid out of such "profits or gains."[54] For example, if the tenant is the occupier of any part of the land, he will already have paid tax, or be liable to pay it, under Schedule A; and if he is the lessor of any part under a "short lease," he will already have submitted, or be liable to submit, to a deduction of tax under that Schedule:[55] the charge under Case VI cannot be applied to any amount on which he thus pays or bears tax. A mortgagee or creditor in possession but not in actual occupation is liable to the like deduction as if he were the landlord.[56]

In addition to the above, but without reference to the period for which they are payable, mortgage and other yearly interest, annuities, rentcharges, fee farm rents, rent services, quit rents, feu duties, teind duties, stipends to licensed curates, and other annual payments, if reserved or charged upon land,[57] are also brought within section 17, so that deduction of tax is now made under the General Rules. But the present section does not apply to rents payable under short leases, which are left to the operation of the Schedule A rules as regards deductions of tax; while rents and other payments connected with

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[51] *Cf. Norwich Union* v. *Embleton*, p. 33 [52] See pp. 32—36.

[53] Rr. 19 (2) and 21 (see pp. 185, 196), are imported by reference to patent royalties in s. 17 (2), see p. 638; rr 1 and 4 of Sched. A, No. VIII, are excluded (see pp. 43—48), and r. 5 can hardly stand without them; but in each case the deduction now authorised must surely operate *pro tanto* as a discharge of rent. For the meaning of "long lease," see p. 49.

[54] See last note; and as to computation under Case VI, see Chap. 16, p. 239.

[55] See pp. 43—46.

[56] Sched. A, No. VII, r. 13, seems still to be applicable see pp. 43, 47, note [18].

[57] Act of 1940, s. 17 (1) (b), read with Sched. A, No. VIII, r 4 (2), see p. 665. Tithe redemption annuities and substituted annuities under the Tithe Act, 1936 (see p. 31), are excluded, no deduction of tax being permitted by s. 13 (5) of that Act: see definition of "annuity" in s. 46 (1), p. 590

"concerns" are already dealt with under Case I,[58] and tithes and other payments formerly in No. II of Schedule A are dealt with under Case III,[59] and are thus unaffected by section 17.[60]

The operation of General Rules 19 and 21 is considered in Chapter 8,[61] to which the reader is referred. It may be noted here that a landlord or other payee is bound to allow the deduction authorised; and that an agreement for payment without such deduction is void.[62] The deduction is made at the standard rate for the year in which the amount payable becomes due, if the payment is made wholly out of profits or gains brought into charge;[63] if it is not wholly so made, the standard rate applicable is that in force at the time of the payment.[64] The provisions of section 211 (2) are applicable as to short deduction or non-deduction before the passing of the annual Finance Act.[65]

A rent payable under a "long lease" is not to be deducted in arriving at the profits of a trade or profession; nor is any other of the payments dealt with by section 17.[66]

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[58] Act of 1934, s. 21, makes somewhat similar provision for "concerns" as regards rent, royalties, etc., see pp. 136 and 574, as to interest, the transfer of "concerns" to Sched D was sufficient to apply the General Rules.

[59] See pp 215—217.

[60] See the words "so far as it does not fall under any other Case" in s 17 (2).

[61] See pp. 185—193, 196 sqq., 204—206, and as to patent royalties in particular, see p. 203.

[62] General Rule 23 (1) (2), see p. 491

[63] General Rule 19 (1), see p. 490; Act of 1927, s. 39 (1), see p. 542; the provisos to that sub-section are not applicable here, as the rules referred to in them no longer apply. Any of the above payments made in respect of land in Scotland for the period ending 15th May is treated as if it had become due at the commencement of that period: Act of 1941, s. 24, see p. 659.

[64] General Rule 21 (1), see p. 491

[65] See p. 205, note [52].

[66] Sched. D, Cases I and II, r. 3 (m) (see p. 474), is imported by s. 17 (2); contrast p. 124.

CHAPTER 3

INCOME FROM OCCUPATION OF LAND: SCHEDULE B

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Scope of Schedule B—The tax as charged under Schedule B is a tax in respect of the occupation of certain classes of land. The form of the Schedule[1] is most confusing; on the face of it, it applies to all lands, etc., which are charged with tax under Schedule A. But when rule 1 (a) with its provisos is read into the Schedule itself, it is found that (generally speaking) residential, industrial and business property, though taxed under that Schedule, are excepted from the purview of Schedule B. This Schedule does not affect any dwelling-house (with its domestic offices) that is not a farmhouse, or "any warehouse or other building occupied for the purpose of carrying on a trade or profession."[2] By the Acts of 1941 and 1942, farm land in what may briefly be described as larger areas (including farmhouse and buildings) and all market-garden land have been taken out of Schedule B, and transferred to Case I of Schedule D.[3]

It is hardly possible to describe the scope of this Schedule otherwise than by the use of negatives; but it may be stated broadly that it applies to farm land of moderate area[4], including a farmhouse let with it under the same tenancy and a house let under the same tenancy with a farm of tithes, to woodlands,[4] to deer forests,[4] to "amenity lands" in general, and to all those miscellaneous lands (not being dwelling-houses[5] or buildings occupied for a trade or profession) taxed under No. I of Schedule A. It includes the paddocks, lawns and enclosures of a racecourse, but not the stands, stables or weighing-rooms.[7] Where the farm land is still within the scope of Schedule B, it does not apply to a dwelling-house occupied by a person who

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[1] See p. 466.

[2] Sched. B, r. 1, provisos (a), (b), see p. 467. The substantive part of this rule prevented Sched. B from operating on any of the lands, etc., included in No. II or No. III of Sched. A, and now transferred to Sched. D: see p. 25.

[3] See p. 55.

[4] R. 7, see p. 466.

[5] *Middleton* v. *L.-A.* (1876), 3 R. 599, see p. 60.

[6] The exception for dwelling-houses carries with it an exception for the "domestic" offices only belonging to the house, but the other exception, for premises occupied for a trade or profession, will exclude, *e.g.*, such buildings as the private-school chapel in *Browne* v. *Furlado*, [1903] 1 K. B. 723.

[7] *Smith* v. *York Race Committee*, [1934] 1 K. B. 517. No question arose as to the racecourse itself.

farms only his own lands, or even by a tenant-farmer who occupies his house under a different lease or agreement from that under which he occupies his farm, although he holds both of the same landlord, for the house (to be included) must be occupied with the farm " by virtue of one and the same demise." On the other hand, Schedule B tax is leviable in respect of such properties as municipal offices in which no trade or profession is carried on.[8] Where Schedule B applies, tax is levied under it in addition to that levied under Schedule A.

Lands occupied by a charity otherwise than (with a certain exception) for purposes of husbandry,[9] and public health sewers,[10] are exempt from tax under Schedule B.

Farm Land: Market-Garden Land—As already stated, all market garden land has now been taken out of Schedule B; and so has what is probably the greater part of the farm land.[11] But the farm land of an individual remains within Schedule B, if his farm land and market-garden land together have a total annual value which does not exceed £100, when aggregated with his share of the annual value of the farm land and market-garden land of any partnership to which he belongs.[12] A similar rule applies to a partnership which consists solely of individuals, save that if the farm land of any of the partners is taken out of Schedule B on the application of the above test, the farm land of the whole partnership is also taken out.[13] The farm land of a company, or of a partnership which has a company or other body for a member, is transferred to Schedule D; together with that of an individual or a partnership which does not satisfy the above tests.[14] It should be noted that though market-garden land is brought in for the purpose of these tests it is transferred to Schedule D whether the tests are satisfied or not. There is no longer any right to elect between Schedules B and D, except as to woodlands.[15]

" Farm land " means " land wholly or mainly occupied for the

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[8] Cf. " Property not carried on for Profit," p. 29.

[9] Finance Act, 1921, s. 30 (1) (b), see p. 505.

[10] S. 34, see p. 507. [11] Act of 1941, s. 10 (1), see p. 651.

[12] S. 11 (1), to which s. 10 is subject, as amended by Act of 1942, s. 28 (1). The aggregate annual values are those for the twelve months preceding the year of assessment, but if the individual (or partnership) began farming during the latter year, the annual values for the latter year are taken, apportionment according to period may have to be made in either case: s. 11 (2) and proviso to sub-s. (3). The annual values for Sched. A are to be taken (and apportioned to the particular land if necessary) without deducting the repairs allowance: sub-s. (3), see p. 653.

[13] S. 11 (4) and proviso, in the application of this proviso, the annual values for the actual year of assessment are to be looked at, and not those for the preceding twelve months. The S. C. has held that where the partners farm no lands as individuals, and the partnership lands are above the limit in value, the fact that their respective shares are below that limit is irrelevant, but the Court did not examine the provisions in any detail: *I. R. v. Houston*, 1943 S. C. 110. With the reduction of the limit to £100, the matter has lost some of its importance.

[14] S. 10 (1); s. 11 (4) (4). [15] Act of 1942, s. 28 (3), see p. 666.

purposes of husbandry, not being market-garden land, and includes the farmhouse and farm buildings, if any."[16] It includes land used for the growth of hops.[17] There is no definition of "husbandry" in the Income Tax Acts;[18] the term is not confined to tillage or cultivation; it includes the grazing and rearing of sheep[19] and cattle, the production of milk, poultry-farming[20] and so on; but not silver-fox farming.[21] It must be a question of fact in each case whether the land is occupied for purposes of husbandry.[22] A stud-farm, perhaps, could not be said to be so occupied; but the existence on a grazing farm of one stallion hired out for service would not prevent the farm as a whole from being so occupied.[23] Where the grazing is let for a season only in each year, and the fencing and manuring are done by the proprietor, he occupies the land for the purposes of husbandry;[24] but if the land is let annually for a year, less one day, and used for grazing, the proprietor bearing none of the expenses, he is not the occupier.[25]

The definition of farm land, it will be observed, excludes "market-garden land." The latter term means "land occupied as a nursery or garden for the sale of the produce."[26] "A defined area may be a 'garden,' even though it is not fenced round, as long as it is a distinct and separate unity devoted to gardening. On the other hand, a field or fields of farming land should not be called a garden merely because they grow products . . . which are mainly or largely found in gardens. The main test is that the defined area should be subject to that nature and intensity of treatment which is characteristic of horticulture."[27] The words "for the sale of the produce" exclude "gardens where produce is grown for the supply of an adjoining house belonging to the same occupier,[28] or gardens

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[16] Act of 1941, s. 10 (2), p. 651

[17] Excluded by the definition of market-garden land see below.

[18] Not in the following Acts where the word occurs: Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 39 (excess profits duty), Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22), s. 1 (3), Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61. Under the first of these, the growing of herbs by chemists for use in their factory was held to be husbandry. *I. R.* v. *William Ransom & Son, Ltd.* [1918] 2 K. B. 709, the manufacture and sale of butter at a co-operative creamery was not: *I. R.* v. *Carron, etc Dairy Soc., Ltd.*, [1917] 2 I. R. 622, 12 Tax C. 1.

[19] *Kerr* v. *Gillespie*, 1920 S. C. 67, 7 Tax C. 473.

[20] *Lean* v. *Ball*, 1926 S. C. 15, 10 Tax C. 341; *Jones* v. *Nuttall* (1926), 42 T. L. R. 284; 10 Tax C. 346, *Long* v. *Belfield Poultry Products, Ltd.* (1937), 21 Tax C. 221.

[21] *I. R.* v. *Melross*, 1935 S. C. 812, 19 Tax C. 607.

[22] Cf. *Bomford* v. *Osborne*, *infra*

[23] See *Malcolm* v. *Lorkhart*, [1919] A. C. 463. The question, however, did not arise for decision in that or the other stud farm cases cited on p. 58.

[24] *I. R.* v. *Grant*, 1943 S. C. 528

[25] *Mitchell* v. *I. R.*, 1943 S. C. 541

[26] S. 10 (2), hop gardens are excluded. The definition is taken from Sched. B, rule 8, which is repealed by s. 52 and Fifth Sched. of the Act of 1941, and under which the cases next cited arose

[27] *Bomford* v. *Osborne* [1942] A. C. 14, 17, 18, *per* Viscount Simon, L.C.

[28] Even, it would appear, if the produce is occasionally sold: cf. *Rickerdike* v. *Lucy*, [1920] 1 K. B. 797

where the profit is made by charging the public for admission." The question whether lands have fallen within this definition has been variously answered;[29] but since the Acts of 1941 and 1942 it affects mainly those individuals and partnerships whose land remains within Schedule B so far as it is farm land and not market-garden land.[30] Land occupied and worked as a single unit is not to be split up in order to see whether the definition of market-garden land applies to part of it, unless the methods of working the garden and the rest of the land are separate and distinct.[31]

Persons chargeable—The tax is charged upon the occupier; and rules 1—5 of No. VII of Schedule A are applied to the tax charged under Schedule B.[32] What has been said[33] as to the effect of those rules with regard to occupation, to the occupier, to unoccupied lands, and to changes of occupation, may therefore be read as applying also to the charge under Schedule B; and the argument that there is no charge on unoccupied lands applies with greater force to Schedule B, which charges tax in respect of the occupation and not of the property. Thus, tax under Schedule B is not chargeable in respect of a golf course which is (under statutory provision) in the hands of trustees who must keep it open to the public; although they make a charge to players, the trustees are not occupiers.[34]

An owner occupying his own land pays tax under both Schedules A and B; but if the land is occupied by a tenant, the latter has no right to deduct Schedule B tax against his landlord.[35] He has, however, the same right or duty to deduct tax on payments of yearly interest, annuities, and other annual payments as a payer of income tax under Schedule D.[36]

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[29] A holding of 200 acres used for the main purpose of growing bulbs was held to be within the definition in *Monro and Cobley* v. *Bailey* (1933), 17 Tax C. 607 (H. L.); as was an area of 350 acres used mainly for growing vegetables, 60 acres of pasture and 7 of fallow being ancillary to that purpose: *Dennis* v. *Hick* (1935), 19 Tax C. 219. In *Williams* v. *Rowe* (1939), 22 Tax C. 508, the lands (173 acres in all) were wholly used for grazing, vegetables and fruit; and in *Kerr* v. *Davies*, *ibid.*, 515, out of 128 acres all but 4 were used for growing vegetables; but the cultivation was found to be of a farming nature, and the lands were held to be outside the definition. Watercress beds were within it: *Roberts* v. *Barter* (1944), 60 T. L. R. 366.

[30] Together with such cases as are indicated in note [29].

[31] *Bomford* v. *Osborne*, above, where the H. L. held on the facts that there was no such distinction, and did not support the decision in *D. Lowe & Sons, Ltd.* v. *I. R.* (1938), 21 Tax C. 597, see *Name* v. *Name* (No. 2), 1942 S. C. 87; *Roberts* v. *Barter* above.

[32] Sched. B, r. 4, see p. 467, and see *Back* v. *Daniels*, [1925] 1 K. B. 526, pp. 38, 58; *Joly* v. *Pinhoe Nurseries, Ltd.*, p. 39. The "occupier" includes members of a partnership and other joint occupiers: see p. 9, and "Farm Land," p. 55.

[33] See pp. 28, 38 *sqq.* As to the unit of assessment, see *Bomford* v. *Osborne*, p. 56.

[34] *Mitcham U. C. Trustees* v. *Evans* (1937), 21 Tax C. 239, applying the poor-rate decision in *Lambeth Overseers* v. *London County Council*, [1897] A. C. 625: see pp. 28, 38.

[35] The right to deduct tax under Sched. A is discussed, p. 43.

[36] As Sched. B contains no rules with regard to deduction of tax, there appears to be nothing to oust the application of General Rules 19 and 21: see pp. 185 *sqq.*

Basis of Assessment under Schedule B—The assessment is made on three times the annual value in the case of any lands occupied only or mainly for husbandry, and on one-third of the annual value in the case of other lands.[37] The annual value is to be assessed on the same principles as for Schedule A,[38] subject to " modifications " in two exceptional cases.[39] The provisions for quinquennial revaluation contained in the Finance Act of 1930 apply to annual values for Schedule B as well as for Schedule A.[40]

Schedule B, however, covers the whole of the profits arising in respect of the occupation of such farm lands and other lands as remain within its purview.[41] But it covers only profits so arising; and it is a question of fact whether a particular profit made by the occupier comes to him as such, and has any necessary relation to the lands.[42] If a farmer whose land is within Schedule B keeps a stallion on that land and earns profits by sending it out to serve, he may be taxable under Schedule D for those profits, in addition to his liability under Schedule B,[43] even though his farm is a stud-farm; but if the stallion always remains on the farm, he is taxable only under Schedule B.[43] Where the occupier of the stud-farm was in partnership with another as regards a particular brood mare which was chiefly kept there, the Schedule B assessment was held to cover only the occupier's share of the profits from the mare; and the partnership was chargeable under Schedule D in respect of the remainder, as well as the profits from racing and selling the mare's progeny.[44] If a person who is chargeable under Schedule B as an occupier of land carries on trade elsewhere as a produce merchant, and disposes of the produce of that land by means of that trade, the profits derived by him from growing and selling such produce are covered by the charge under Schedule B, and he is not liable to be assessed under Schedule D, except to the extent of a merchant's commission on its sale.[45]

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[37] Sched. B, see p. 406, as amended by s. 28 (2) of the Act of 1942 and s. 23 of the Act of 1922. See also p. 60, note [54].

[38] See pp. 30 *sqq.*

[39] Sched. B r. 2 (a) (b), read with r. 11 of No. IV of Sched. A, see p. 437. Neither of these cases is of common occurrence.

[40] Act of 1930, ss. 27, 28, and First Sched.: cf. p. 37. As to procedure, and as to appeals, see pp. 370, 381.

[41] See *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432, *Croft* v. *Synell Aerodrome, Ltd.*, [1942] 1 K. B. 317 (C. A.).

[42] *Malcolm* v. *Lockhart*, [1919] A. C. 463, cf. *Earl of Derby* v. *Aylmer*, [1915] 3 K. B. 374, p. 131. *Same* v. *Bassom* (1926), 42 T. L. R. 380, p. 77. *Marshall* v. *Tweedy*, 1927 S. C. 243.

[43] *Lord Glanely* v. *Wightman*, [1933] A. C. 615.

[44] *Dawson* v. *Counsell* (1936), 22 Tax C. 149.

[45] *Back* v. *Daniels*, [1925] 1 K. B. 520, see p. 38, approved in *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432, *per* Lord DUNEDIN, at 442, *per* Lord ATKIN, at 456; see p. 71. A Sched. B assessment on woodlands covers the profits earned from them by a sawmill on that land: *Christie* v. *Davies*, [1945] 1 All E. R. 370.

Poultry-farming[46] or silver-fox farming,[47] may be merely a method of occupying the land, so that the occupier, if still chargeable as such under Schedule B, is not separately taxable under Schedule D for the profits.

Where lands within the scope of Schedule B: (1) are occupied by a dealer in cattle or a dealer in or seller of milk, and (2) the Commissioners find them to be insufficient for the keep of the cattle brought on to them, and (3) they find that three times the annual value does not afford a just estimate of the profits of the business in cattle or milk as the case may be, they may charge the occupier under Schedule D upon the balance of the profits over and above the sum upon which he is taxed under Schedule B.[48] A farmer may be a "dealer in or seller of milk" under this rule even though he himself sells the milk direct from his farm, without keeping any shop or other establishment for its distribution, and even though he sells only milk which is produced on the lands he occupies.[49] The profits (if any) assessable under this rule are found by deducting the trebled annual value from the profits of the trade for the year of assessment or the year preceding, as the case may be.[50]

An occupier (as owner or otherwise) of lands for the purpose of husbandry only, who shows within one year after the end of the year of assessment that the profits from his occupation have fallen short of the annual value, may be assessed on his actual profits.[51] Again, if a loss is sustained in such occupation, the liability may be adjusted.[52] Losses by flood or tempest are allowed for.[53] There will be a new allowance under the Act of 1945.[53a]

The deduction in respect of expenses allowed generally to

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[46] *Lean* v. *Hall*, 1926, S. C. 15; 10 Tax C. 341, *Jones* v. *Nuttall* (1926), 42 T. L. R. 384; 10 Tax C. 346, *Long* v. *Belfield Poultry Products, Ltd.* (1937), 21 Tax C. 221; but if eggs are sent out to be hatched, and the chicks brought back and sold, this may be a separate business, and the profits chargeable under Sched. D: *Thornber Bros., Ltd.* v. *MacInnes* (*ibid.*), *Watson* v. *Hornby*, [1942] 2 All E. R. 506.

[47] *I. R.* v. *Melrose*, 1935, S. C. 812; 19 Tax C. 607, see p. 56.

[48] Sched. D, Case III, r. 4, see p. 448. Each of the three points must be established before an assessment under Sched. D can be made. *Huxham* v. *Johnson* (1926), 136 L. T. 410. A farmer who made additional profits by summer grazing on land which he did not occupy was taxable for those profits under Case VI of Sched. D (now possibly under Case I, by reason of s. 10 (1) of the Act of 1941): *McKenna* v. *Herlihy*, *Donald* v. *Thomson*, see p. 237; but this does not apply to the wintering of stock away from a Highland sheep farm, which is an ordinary and necessary incident of the farm. *I. R.* v. *Marshall and Mitchell*, see p. 237. R. 4 is applicable to the profits of transactions by co-operative and other registered societies and mutual trading companies. Act of 1933, s. 31 (1), see p. 73.

[49] *Huxham* v. *Johnson*, *supra*; *Stephenson* v. *Walker* (1927), 44 T. L. R. 155.

[50] Sched. D, Case III, r. 2, as amended by s. 17 of the Act of 1922, see p. 479. Any necessary apportionments, etc. of profits to specific periods may be made: Act of 1926, s. 35 (1), see p. 502.

[51] Sched. B, r. 6, see p. 467, as amended by the Act of 1923, s. 30 (3), see p. 522. The General Commissioners are to be the judges, where the tax has already been paid, the rule provides for repayment. The rule was considered in *Tranent Co-operative Soc., Ltd.* v. *Brown*, see p. 60.

[52] Act of 1918, s. 34, see p. 413; s. 13 of the Act of 1937 does not seem to apply here.

[53] Sched. B, r. 3, see p. 467, and see p. 35.

[53a] See Chap. 7, p. 170.

clergymen and ministers of religion[46] applies to assessments made upon them under Schedule B, *e.g.*, in respect of the occupation of glebe lands.

Proof may be required[47] that lands are not occupied for the purposes of husbandry only, or mainly for those purposes, in order that the assessment may be upon one-third, instead of three times the annual value. But the assessment will be upon three times the annual value in spite of the land being used for other purposes if, on reference to the Board of Agriculture in England or Scotland or the Department of Agriculture in Northern Ireland, such other use is certified to be unreasonable.[48]

Sporting Rights—The annual value of land which is within Schedule B includes that of any sporting rights to which the occupier is entitled whether as owner or by lease or agreement.[49] Thus, the tenant of a deer forest was held liable in respect of the annual value of the forest, which was measured by the rent paid for it, including the privilege of killing deer, he had claimed that only the value of the land as if it were a sheep-farm could be charged.[50] In that case the tax was not demanded in respect of the grouse-shooting, which was let to the same tenant; but it was afterwards held that a farming tenant who was also the tenant of shooting rights over his farm was taxable in respect of the annual value of the farm and of the shooting rights, although he held the latter under a separate lease.[51] If the occupier sublets the sporting rights without divesting himself of the occupation, he does not thereby become entitled to any reduction in his assessment under this Schedule.[52]

Woodlands : Election for Schedule D—Any person occupying woodlands may elect to be assessed under Schedule D instead of Schedule B, by giving notice to the inspector within two months after the commencement of the year of assessment.[53] He must prove that the woodlands are managed by him on a commercial basis, and with a view to the realisation of profits; the election once made by any person will apply as long as the

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[46] General Rules, r. 2 (1) (a), see p. 487.

[47] To the satisfaction of the General Commissioners, either before allowing the assessment or on appeal.

[48] Sched. B, see p. 466. Note that this provision is not confined to cases where there is no use of the land for husbandry, it may be applied where such use is deemed insufficient.

[49] The cases happen to have arisen under Sched. B, but they are equally applicable to Sched. A : see p. 31.

[50] *Middleton* v. *L.-A.* (1878), 2 R. 599, 1 Tax C. 109.

[51] *Revell* v. *Scott* (1895), 22 R. 772, 3 Tax C. 403. Angling rights were also included in the shooting lease, but do not appear to have been included in the assessment.

[52] *Miller* v. *Anderson*, 1922 S. C. 284, 8 Tax C. 279.

[53] Sched. B, r. 7 (as amended by s. 23 (2) of the Act of 1922) (see p. 468), read with r. 5 (2); Act of 1942, s. 28 (3), see p. 666. The right of option extends to an industrial and provident society : *Tranent Co-operative Soc., Ltd.* v. *Bruce* (1920), 58 S. L. R. 283; 8 Tax C. 1.

woodlands are occupied by him, and must extend to all woodlands (managed as above described) on the same estate;[62] any woodlands planted or replanted since July 9, 1916, will, however, be treated for this purpose as a separate estate if notice is given within ten years after the time of planting or replanting.[63] If the election is made, the profits from the occupation of the woodlands will be computed as profits of a trade,[64] that is, in general according to the profits made in the preceding year. A person who sustains loss may obtain an adjustment of his liability by reference to that loss.[65] Deductions are allowed for depreciation or obsolescence of machinery and plant.[66] The allowances relating to machinery and plant under the Income Tax Act, 1945, will also be available; as well as that for capital expenditure on forestry land and buildings.[67]

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[62] This may mean lands held by the same person under the same title and lying in a ring-fence, or all lands wherever situate held by the same person under the same title, or lands held by the same person under different titles. The Act affords no guidance.

[63] The directions as to procedure are obscure, but a person who desires to exercise the option will probably be safe from errors of procedure if he (1) gives notice to the inspector of taxes within two months of the commencement of a year of assessment (see r. 5) that he desires to be assessed under Sched. D, and (2) within the same time makes application to either the General or the Special Commissioners to prove the facts as to management; it appears from para. (c) of r. 7 that he must make this application every year (and is liable to have it overruled in any year) although his election, when made, binds him once for all. He cannot apply both to General and Special Commissioners in the same year.

[64] See Chap. 6, pp. 97 *sqq.*, 142, as to the account year to be taken, see Act of 1926, s. 34, as amended, p. 533.

[65] Act of 1918, s. 34, see p. 151; the election must have been made before such an adjustment can be claimed. Where there has been an election, the loss may be carried forward to succeeding years, as in the case of an ordinary trade. Act of 1926, s. 33 (4), see p. 534. Act of 1941, s. 11 (5), see p. 653. S. 13 of the Act of 1937 does not seem to apply here.

[66] Act of 1925, s. 16, see p. 525, and see proviso (u); Sched. D, Cases I and II, rr. 6, 7, see pp. 131 *sqq.*

[67] See Chap. 7, pp. 165, 170. See also s. 60 (3) of that Act, p. 733.

CHAPTER 4

INTEREST, ETC., PAYABLE OUT OF PUBLIC REVENUES: SCHEDULE C

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Scope of Schedule C—Income tax is charged under this Schedule on all profits arising from interest, public annuities, dividends and shares of annuities payable out of the public revenue of the United Kingdom, or of any foreign State or British possession, if payable in the United Kingdom.[1] But if the person owning any securities of a foreign State or British possession, and entitled to the interest and dividends thereon, is not resident in the United Kingdom, no tax is chargeable;[2] the non-resident can obtain this relief, even though the securities are held under a trust, if he is the sole beneficiary in possession and can at any time call upon the trustees to make him the absolute owner.[3]

"'Public revenue' includes the public revenue of any Government . . . and the revenue of any public authority or institution . . . outside the United Kingdom";[4] public annuities are not defined. Interest, however, payable by public authorities (apart from the Crown) in this country is charged under Schedule D.[5] In practice, annuities of the nature of pensions are taxed (with other pensions) under Schedule E, though paid by the Crown or out of the public revenues of the United Kingdom,[6] but annuities of the nature of pensions payable in the United Kingdom out of the revenues

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[1] Sched. C, opening words: rr 1 (a) and 2 (d), see pp 468—469; other profits on securities bearing interest so payable are chargeable under Sched. D, Case III, r. 1 (c), see p. 211, so also interest, etc., payable as described in the text where the half yearly payments do not exceed 50s., *ibid.*, r 1 (d). As to foreign loans and as to Northern Ireland, see p. 65.

[2] Sched. C, r. 2 (d). Act of 1935, s. 23 (4), see p 640. This does not apply where such a person carries on a banking or assurance business, or a trade in securities, in the United Kingdom. Act of 1940, s. 21 (1), see p. 640. *Hughes* v. *Bank of New Zealand*, [1938] A. C. 366, is to that extent set aside. As to the meaning of "resident," see pp. 79, 266, and as to appeal, p. 385. If the securities have become vested in any custodian, etc., of enemy property, such vesting is to be disregarded for this purpose. Act of 1925, s. 20, see p. 527. See also Act of 1940, s. 21 (5), p. 641.

[3] R. 2 (d), proviso, the relief may be given by allowance or by repayment, see p. 469.

[4] Act of 1918, s. 23 (3), see p. 527.

[5] See Chap. 8.

[6] See p. 214. Sched. E charges the tax on annuities payable as stated in the text "other than annuities charged under Sched. C." As under either schedule the assessment is on the profits of the actual year, the question which schedule applies affects the method of collection rather than the amount payable. See, however, Act of 1922, s. 17 (p. 255, note [4]), and as to annuities paid by an institution in India, see p. 191.

of a foreign State or public authority are chargeable under Schedule C.

No tax is chargeable under this Schedule in respect of stock, dividends, or interest belonging to the Crown, or to the accredited minister of any foreign State resident in this country.[7]

War Loan, etc.—On certain securities issued under War Loan Acts interest is paid without deducting tax; such interest is taxable under Schedule D and not under Schedule C.[8] Similar conditions may be applied to securities issued under the National Loans Act, 1939.[9] But where such bonds or stock are inscribed or registered in the books of the Bank of England or Bank of Ireland, the holder may, on application, have the tax deducted at the source;[10] if he holds as a trustee, he need not obtain the consent of the beneficiary. The application may be withdrawn, and in that case and in case of transfer, the interest will again be paid in full without deduction. Both application and withdrawal must be made in a prescribed form; in either case two months' notice is required, that is to say, any payment of interest within two months of the application or withdrawal will not be affected thereby. When the name of the holder who made application is changed in the books of the bank, it would appear that the interest becomes again payable without deduction of tax.

A bank carrying on a *bonâ fide* banking business in the United Kingdom is relieved from tax under Schedule C upon interest on securities which represent subscriptions to War Loans by the bank; this interest is to be brought into the general profits of the bank for assessment under Schedule D.[11]

No tax is levied in respect of interest on securities issued before April 6, 1919, by the Treasury as being tax free, while they are in the beneficial ownership of persons not ordinarily resident in the United Kingdom;[12] and the Treasury may issue any securities with a similar condition under any Act.[13] This exemption covers securities so issued forming part of the "foreign life assurance fund" of an assurance company if the income is applied or re-invested for the purposes of that fund, or purchased out of the interest of the fund remitted to this

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[7] Sched. C, r. 2 (a), (b), (c). Act of 1938, s. 23 (4).
[8] Act of 1918, s. 40 (2); Sched. D, Case III, r. 1, see pp. 417, 479.
[9] 2 & 3 Geo 6, c. 117, s. 3, and 2nd Sched., para. 4.
[10] Under Sched. C; Finance Act, 1921, s. 27, see p. 504.
[11] Sched C, r 3, see p 469. The Special Commissioners must be satisfied that the securities represent such subscriptions.
[12] S. 46 (1), read with s. 239 (2). But as to any such person who is carrying on certain kinds of business here, see Act of 1940, s. 21 (2), p. 641, and note [2], p. 62; also as to residence and appeal and as to securities vested in a custodian, etc., of enemy property. The computation of relief where a person not so resident drew an income from investments of a fund which included War Loan stock was considered in *I. R.* v. *Crossley*: see p. 201. See also Act of 1940, s. 21 (5), p 641.
[13] No. 2 Act of 1931, s. 22 (1) (a), see p 565.

country, even though the company carries on business in the United Kingdom.[14]

The interest on war savings certificates is also exempt, provided the certificates are not held in excess of regulations by the person who claims the exemption; this applies also to national savings certificates issued by the Treasury through the Post Office, and to Ulster savings certificates held by persons resident and domiciled in Northern Ireland;[15] as well as to interest on certain classes of savings certificates issued to persons resident in Northern Ireland or in a colony, protectorate or mandated territory.[16]

Tax is not chargeable in respect of interest on tax reserve certificates.[17]

Tax deducted before Payment of Interest by Bank of England, etc.—Under Schedule C the tax is deducted by the authorities, agents and so on, entrusted with the payment of the interest, annuities, etc., in making the payment.[18] One set of rules[19] applies to payments made to or through the Bank of England, the Bank of Ireland, or the National Debt Commissioners; they must make accounts and deliver assessments and forward them to the Special Commissioners.[20] The latter send a certificate to the Bank of England, etc., showing (among other things) the amounts of tax due from those bodies,[21] who are to retain the amount of the tax shown in the certificate before making any payment.[22] The retaining of the amount is deemed a payment of the tax by the person entitled to the interest, etc.; and the bodies retaining the tax are deemed to have paid the full amount due to such a person.[23] Speaking generally, these rules do not apply where the half-yearly payment due does not exceed 50*s.*,[24] and no deduction of tax is made where the dividends are certified by the Charity Commissioners to be subject only to charitable trusts, and to be exempt from income tax.[25] Interest, etc., payable out of public revenues

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[14] S. 22 (2); Act of 1918, s. 46 (2) (3), "assurance company" means any person or body of persons to which the Assurance Companies Act, 1909, applies; "foreign life assurance fund" is also defined in s. 237, see p. 452. The Act of 1909 (9 Edw. 7, c. 49) applies by s. 1 to all persons or bodies corporate or unincorporate carrying on within the United Kingdom business (as there defined) of life assurance, fire, accident, or employer's liability insurance, or bond investment (except registered friendly societies and trade unions), and to a company registered under the Companies Acts transacting such business in any part of the world.

[15] Act of 1918, s. 47, Savings Banks Act, 1920 (10 & 11 Geo. 5, c. 12), s. 7, Finance Act, 1922, s. 28, see p. 513.

[16] Act of 1942, s. 31, see p. 667; certain limits may be prescribed by regulations.

[17] S. 29.

[18] Other matters relating to deduction of tax at the source are dealt with in Chap. 11.

[19] Set out p. 469. [20] Rr. 1, 2, 3. As to income tax in Ireland, see p. 7.

[21] Rr. 4, 5. [22] R. 6. [23] R. 7.

[24] R. 9; such small payments are taxed under Sched. D, Case III, see p. 479.

[25] R. 10; Charitable Trusts (Amendment) Act, 1855 (18 & 19 Vict. c. 124), s. 28. As to exemptions generally for charitable purposes, see pp. 279 *sqq.*

by a public department is taxed in a similar manner to the foregoing.[26]

Interest on Foreign Loans, etc.—Interest, etc., payable out of the revenue of Northern Ireland or out of foreign revenues (and indeed out of Dominion revenues, where this is not payable through the Bank of England or of Ireland) is taxable under a separate set of rules.[27] These rules apply generally as regards payments out of the revenues of Northern Ireland; as regards other payments, only when they are made to persons in the United Kingdom.[28] The effect[29] of these rules, taken with the Schedule, is that interest, *e.g.*, on a foreign loan, is to be charged with income tax, and the persons intrusted with payment are to be assessed and are to pay tax on behalf of the persons entitled to the interest, etc.[30] Such an agent is bound under penalty to produce accounts to the Commissioners of Inland Revenue; upon these the Special Commissioners assess the agent, allowing, however, for any exemptions.[31] He is liable as if the tax were due from himself,[32] and receives for this service an allowance at a rate not less than 13*s.* 6*d.* per £1,000 of the interest, etc., in question.[33] He is not obliged to disclose the affairs of any person for whom he is acting.[34]

Realisation of Coupons.—If a banker (or other person) obtains for any other person payment of dividends outside the United Kingdom by means of coupons, if a banker in the United Kingdom sells or otherwise realises coupons for any dividends for any other person, or if a dealer in coupons purchases coupons for any dividends (except from a banker or another dealer) the dividends or the proceeds of realisation are chargeable with tax under Schedule C; and the banker, dealer, etc., is to be assessed under the set of rules last cited.[35] "Dividends" here means "interest, annuities, dividends or shares of annuities payable elsewhere than in the United Kingdom" (whether or

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[26] "Rules as to interest, etc., payable . . . by any public department," see p. 471. The main difference is that the Commissioners who charge the interest are officers of the department concerned, appointed under s. 69.

[27] See p. 470, and note [26] on p. 64. The word "dividends" is used in this set of rules to cover interest, annuities, dividends, and shares of annuities, see r. 9. These are called the "paying agents rules" in Act of 1938, s. 23 (6) (d).

[28] R. 1, see p. 470, as amended by the Act of 1926, s. 24 (1).

[29] *Per* Rowlatt, J., in *Purdie* v. *R.*, [1914] 2 K. B. 112, at 116.

[30] R. 3, read with r. 7 of the preceding set of rules, set out p. 470.

[31] Rr. 1, 2, see pp. 470—471; as to exemptions, see Chaps. 1 and 13.

[32] R. 4.

[33] R. 5; but this does not apply to payments out of the revenues of Northern Ireland: Act of 1926, s. 24 (2), see p. 520.

[34] R. 8. As to the practice under the corresponding rules in the Act of 1853, see Lord Cave's remarks in *Singer* v. *Williams*, [1921] 1 A. C. 50, 51.

[35] Act of 1938, s. 23 (1) (2), see p. 59 (); and see note [27]; the Bank of England and Bank of Ireland are, however, included: sub-s. 6 (a). The exemptions noted on pp. 62, 63, are applicable, see sub-s. 4. This enactment overrides the decision in *Pugel* v. *I. R.*, [1938] 2 K. B. 25, but is far wider in scope.

the partnership trade;[14] but sales of slag by a firm which had ceased to carry on mining operations or any other business have been found not to constitute a trade;[15] so has a sale of stock which takes place after the retirement of an individual trader.[16]

A company formed to acquire and deal with the assets of a bank in liquidation may be carrying on a trade;[17] and so may a company formed to deal with lands which have been transferred to the bondholders of a defaulting State.[18] On the other hand, a company formed in order more conveniently to develop and realise lands held on trust or otherwise by various persons has been held not to be trading;[19] but in somewhat similar cases an opposite result has been arrived at.[20] A company formed for building and holding blocks of tenements, some of which it incidentally sold, was, however, held to be realising its investments, and not to be carrying on a trade;[21] nor was a company carrying on a trade whose only function was to receive a monthly payment in respect of a newspaper which it owned, but which was amalgamated with another.[22] The sale of a stock of goods may constitute a trade, though the whole of the stock has been purchased in a single transaction, and no further operations of the same kind are undertaken after that stock has been sold;[23] and so may the transactions relating to a single vessel, which has been purchased as a cargo boat, converted into a drifter, and then sold;[24] and the promotion of a company by a one-man company formed for the purpose.[25]

A company which carries on the development of a landed estate may be carrying on a trade.[26] And, as has been seen,

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[14] *Hillerns and Fowler* v. *Murray* (1932), 48 T. L. R. 213; 17 Tax C. 77; but see *Southern* v. *Cohen's Exors.*, p. 146.

[15] *Shingler* v *Williams* (1933), 49 T. L. R. 221; 17 Tax C. 574: see p. 180.

[16] *I. R.* v. *Nelson*, 1939 S. C. 689.

[17] *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578, 3 Tax C. 542; but in that case it did not appear whether any profits had in fact been made. A different conclusion was reached in *I. R.* v. *Old Bushmills Distillery Co., Ltd.* (*in Liquidation*), [1928] N. I. 56; 12 Tax C. 1148 (corporation profits tax). See also "Additions to Capital not included in Profits," pp. 104—109 *sqq.*

[18] *Alabama Coal, etc. Co.* v. *Mylam* (1926), 11 Tax C. 232.

[19] *Rand* v. *Alberni Land Co., Ltd.* (1920), 7 Tax C. 629.

[20] *Balgownie Land Trust, Ltd.* v. *I. R.*, 1929 S. C. 790; 14 Tax C. 684; *St. Aubyn Estates, Ltd.* v. *Strick* (1932), 17 Tax C. 412.

[21] *I. R.* v. *Hyndland Investment Co., Ltd.* (1929), 14 Tax C. 694; so in the case of a firm, *I. R.* v. *Dean Property Co.*, 1939 S. C. 545. Contrary decisions were given in *Sharpless* v. *Rees* (1940), 23 Tax C. 361; *Broadbridge* v. *Beattie* (1944), 26 Tax C. 63. These cases turned on the Commissioners' findings of fact.

[22] *Morning Post, Ltd.* v. *George* (1940), 23 Tax C. 514; LAWRENCE, J., declined to follow cases decided on excess profits duty and corporation profits tax.

[23] *Martin* v. *Lowry*, [1927] A. C. 312; *Rutledge* v. *I. R.*, 1929 S. C. 379; *I. R.* v. *Fraser*, 1942 S. C. 493. But see *Jones* v. *Leeming*, [1930] A. C. 415; *Williams* v. *Davies*, [1945] 1 All E. R. 304, and p. 234.

[24] *I. R.* v. *Livingston*, 1927 S. C. 251.

[25] *G. K. Trust, Ltd.* v. *Rees* (1940), 23 Tax C. 217.

[26] Even though it is primarily a shipping company: *Cayzer, Ltd.*, v. *I. R.* (1942), 24 Tax C. 491. See *Furtado* v. *Cardonald Feuing Co.*, 1907 S. C. 38, and other cases cited p. 123. Also *Lever* v. *Wilkinson* (1944), 26 Tax C. 105. A man who buys and sells land without developing may be carrying on a trade: *Reynolds Exors.* v. *Bennett* (1943), 25 Tax C. 401.

the owners of a hospital may be carrying on a trade by hiring out rooms for entertainments and so on.[27] But profits derived from the letting of property to tenants are not profits of a trade assessable under Case I; and a company which owns a block of buildings in which it lets offices and receives "rents" for their use as well as payments for cleaning and other services, can only be assessed under that Case in respect of the profits, if any, arising from the rendering of those services; the income from the lettings is covered by the Schedule A assessments, and by any additional charge under Case VI.[28] Similar remarks apply to rents derived from the letting of tied houses by a holding company to a brewing company.[29] Rent received by a company from letting a cinema and café equipped as a going concern, forms part of the trade profits of the lessor company, only so far as it is paid for matters other than land or buildings.[30] So a company owning an aerodrome was held not to be assessable under Case I in respect of profits derived from licences to use the landing ground, to repair aircraft and supply petrol, and to sell ice-cream, and from landing fees.[31]

A shipping concern is itself a trade, and if a ship is owned in shares, the owners of the shares are assessable as such in respect of the trade carried on by means of the ship; they cannot treat the ownership of their respective shares as a mere part of any other trade in which they happen to be engaged,[32] even if that other trade is the sole ownership of another ship.[33]

A series of speculations in future delivery contracts for cotton (where no goods passed, but each transaction ended in the receipt or payment of differences), which had been continuous over many years, has been held to be a trade;[34] so has a series of adventures in acquiring the shares in companies owning cotton-mills, winding up the companies, and promoting new companies to acquire the assets of the old.[35] The purchase of endowment policies by an individual to provide him with a series of capital repayments, and their sale upon a change in his mode of living, were not an adventure in the nature of trade.[35a].

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[27] *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1; see p. 69.
[28] *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432, see p. 42
[29] *Whelan* v. *Alfred Leney & Co., Ltd.*, [1936] A. C. 393; see p. 118.
[30] *Shop Investments, Ltd.* v. *Sweet*, [1940] 1 All E. R. 533, where *Windsor Playhouse, Ltd.* v. *Hephos* (1933), 17 Tax C. 481, was held to be overruled by the case last cited. The above cases were reviewed, and *Shop Investments, Ltd.* v. *Sweet* approved, by Lord GREENE, M.R., in the *Sywell Case*, *infra*.
[31] *Croft* v. *Sywell Aerodrome, Ltd.*, [1942] 1 K. B. 317 (C. A.).
[32] *Att.-Gen.* v. *Borrodaile* (1814), 1 Price, 148.
[33] *Farrell* v. *Sunderland S.S. Co.* (1903), 4 Tax C. 605
[34] By ROWLATT, J., in *Cooper* v. *Stubbs* (1925), 41 T. L. R. 614; but in C. A., [1925] 2 K. B. 753, while Lord HANWORTH, M.R., agreed with that decision, the majority (WARRINGTON and ATKIN, L.JJ.) held that, on the findings, Case I was inapplicable, and the profits were taxable under Case VI: see p. 235.
[35] *Pickford* v. *Quirke* (1927), 138 L. T. 500.
[35a] *Smith-Barry* v. *Cordy* (1945), 61 T. L. R. 376.

Farming and Market-gardening—Market-gardening is charged as a trade under Case I; "market-gardening" is to be construed according to the definition of "market-garden land," which "means land occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops)."[36] In a large class of cases "farming" also is treated as a trade; "farming" is to be construed according to the definition of "farm land," which "means land wholly or mainly occupied for the purposes of husbandry not being market-garden land, and includes the farmhouse and farm buildings, if any."[36] Where the farming carried on by any particular person or partnership or body of persons is treated as a trade, it is all to be treated as one trade wherever it is carried on."[37] But some farm land still remains within Schedule B; and where this is the case, the farming there carried on is not treated as a trade.[38]

Mutual Concerns :– Insurance Companies : Registered Societies—An assurance company which consisted entirely of members having participating policies (but not shares), was held not to be earning profits of a trade by effecting insurance among its members;[39] and this decision was followed in the case of a company (limited by guarantee) formed among employers to indemnify its members against liability for compensation in respect of fatal accidents, although it did not repay to its members the surplus receipts from premiums, but carried them to reserve.[40] But the assurance company in the former case was assessable for profits upon annuities and non-participating policies and upon other branches of insurance business.[39] A members' golf club (unincorporated) may be liable to tax in respect of the green fees charged to visitors;[41] and an unregistered trade union, in respect of profits made from the admission of non-members to a holiday camp.[42] And where an assurance company has shareholders, the profits made on participating policies are taxable profits.[43] A trade association, being a company limited by shares, may be earning taxable profits in providing accommodation and trading facilities for its own members as well as for non-members.[44]

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[36] Act of 1941, s. 10 (1), (2), see p. 651; and see pp. 55–57. The trade may include sales of willows: *Elmes* v. *Trembath* (1934), 19 Tax C. 72. As to ploughing grants, see p. 108. [37] Sub-s. (3); as to the place of charge, see p. 367.

[38] S. 11; the line of division between Schedules B and D is indicated at p. 55.

[39] *New York Life, etc.* v. *Styles* (1889), 14 App. Cas. 381; some of the Lords, indeed, held that no trade was carried on. As to assurance companies, see pp. 121—123.

[40] *Jones* v. *S. W. Lancs. Coal Owners' Assn., Ltd.*, [1927] A. C. 827; s. 31 (1) of the Act of 1933 (see below) does not supersede this decision, *Ayrshire Employers, etc.* v. *I. R.*, 1944 S. C. 417.

[41] *Carlisle and Silloth Golf Club* v. *Smith*, [1913] 3 K. B. 75; approved in *Coman* v. *Rotunda Hospital*, see p. 73, note [53]. See *Carnoustie Golf Course Committee* v. *I. R.*, 1929 S. L. T. 266; *I. R.* v. *Stonehaven Recreation Ground Trustees*, 1930 S. C. 206.

[42] *Nat. Assocn. of Local Government Officers* v. *Watkins* (1934) 18 Tax C. 499.

[43] *Last* v. *London Assurance, etc.* (1855), 10 App. Cas. 428 (see p. 122); *Equitable Life, etc.* v. *Bishop*, [1900] 1 Q. B. 177.

[44] *Liverpool Corn Trade Assn., Ltd.* v. *Monks*, [1926] 2 K. B. 110.

The Finance Act, 1933, moreover, treats as trading transactions[45] all transactions of any company or society with its own members by which a profit or surplus is earned, which would be treated as profits of a trade if they were transactions with non-members; but any discount, rebate, dividend or bonus granted to members or other persons on account of their transactions with the company or society, provided it is calculated according to the amounts paid or payable to or by those members or other persons, or according to the magnitude of their transactions, is to be excluded from the profits, by being treated as a trade expense.[46] Any amount distributed by reference to any share or interest in capital is to be included in the profits.[46] The section applies to any incorporated company or society whether incorporated in the United Kingdom or elsewhere, including a society registered under the Industrial and Provident Societies Acts, 1893—1928.[47] It applies, therefore, to companies such as those described in the preceding paragraph, as well as to co-operative societies; but bonuses, etc., repaid on "mutual" policies, and rebates paid by a co-operative society, are still outside the purview of the income tax.[48] Amounts which are carried to reserve, and amounts which are distributed to shareholders as such, are brought within it, as in the case of ordinary companies.

Charitable Institutions—Certain decisions as to charities illustrate the proposition that there may be a trade, for whatever motive it is carried on, provided that the methods employed are commercial.[49] The business of selling a hymn-book is a trade, although the profits are distributed among widows and orphans of ministers and missionaries;[50] so is that of a bookseller's shop, though the profits are devoted to the spread of religious knowledge in other ways;[51] and that of a restaurant, whose proceeds go to the support of an institution for religious and social improvement.[52] Similarly, a hospital which lets rooms for entertainments and meetings is carrying on a trade;[53] and a society for the advancement of agriculture which makes

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[45] S. 31 (1), see p. 368; but see notes [39], [46]. Transitional provisions are contained in sub-ss. 5, 6.

[46] S. 31 (3) (a) (b); see further, as to the method of calculation, p. 155.

[47] S. 31 (7); sub-s. 2 repeals the exemption from tax under Sched. D and Sched. C formerly enjoyed by many of these societies. Where the society's business consists mainly in the making of investments, relief in respect of expenses of management is given by sub-s. 4.

[48] Except where paid by a trader on purchases for his trade: *Pope* v. *Beaumont*, [1941] 2 K. B. 321.

[49] See p. 69.

[50] *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7.

[51] *Religious Tract and Book Society* v. *Forbes*, p. 69.

[52] *Grove* v. *Young Men's Christian Association* (1903), 4 Tax C. 613.

[53] *Coman* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, where the last three cases were cited with approval in the House of Lords.

profits by an annual show.[54] Again, the carrying on of a lunatic asylum or hospital for profit is a trade;[55] and so is the carrying on of a school.[56] But there is an exemption in respect of the profits of a trade carried on by, and in the course of effecting a primary purpose of, a charity, if the profits are solely applied to the purposes of the charity.[57]

Public Undertakings—The profits of a municipal or other public undertaking may be the subject of charge under Schedule D, by reason of the transfer to that schedule of the concerns grouped under No. III of Schedule A,[58] which include—

> ". . . gasworks, . . . waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages."[59]

"If the fund is in its nature subject to taxation, it remains so subject, notwithstanding its proceeds are to be applied to public purposes, and the proceeds which are to be so applied are what remains after discharging the burden [*i.e.*, the income tax] to which it is subject."[60] Accordingly, moneys derived by a municipal corporation from market dues[61] or coal dues[62] are so taxable; but a local authority is not chargeable for a poor rate or other local rate, because such rates are not property, neither are their proceeds profits. Thus a local authority cannot be charged upon the proceeds of a compulsory water rate leviable in respect of all houses within its district;[63] but it is liable in respect of the proceeds of non-compulsory rates levied upon those who take the water outside its district,[64] and in respect of receipts for the supply of water by agreement for non-domestic purposes;[65] for in these two cases the water is supplied by agreement and the proceeds or receipts (after deduction of expenses) are in fact profits upon the sale of water.

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[54] *Royal Agricultural Society* v. *Wilson* (1924), 40 T. L. R. 763; this decision was followed by the enactment of a specific exemption: Act of 1924, s. 23, see p. 290.

[55] *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624; *Needham* v. *Bowers* (1883), 21 Q. B. D. 436; as to exemptions for hospitals, see Chap. 13.

[56] *Brighton College* v. *Marriott*, [1926] A. C. 192.

[57] Act of 1921, s. 30 (1) (c), as amended by Act of 1927, s. 24, see p. 505; there is also an exemption for trades mainly carried on by beneficiaries of the charity.

[58] Act of 1926, s. 28, *see* p. 529; the following cases mostly arose under Sched. A before the transfer.

[59] No. III, r. 3, see p. 455.

[60] *Att.-Gen* v. *Black* (1871), L. R. 6 Ex. 78, 308, *per* BLACKBURN, J., at 310.

[61] *Att.-Gen.* v. *Scott* (1873), 28 L. T. 302.

[62] *Att.-Gen.* v. *Black*, *ubi sup.*

[63] *Glasgow Water Commissioners* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28; see *Mersey Docks* v. *Lucas*, 8 App. Cas. *per* Lord BLACKBURN, at 911, 912. These cases and the later *Glasgow Water Case* (see next note) were considered by the House of Lords in *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540; see p. 76.

[64] *Miller* v. *Glasgow Water Commissioners* (1886), 13 R. 489; 2 Tax C. 131; *Dublin Corporation* v. *M'Adam* (1887), 20 L. R. Ir. Ex. 497; 2 Tax C. 387.

[65] *Miller* v. *Glasgow Water Commissioners*, *ubi sup.*

Upon the same principle, a municipal corporation is taxable for the profits derived from supplying gas to private consumers,[66] and may not deduct against these profits the cost incurred in lighting its streets.[67] In short, a local authority owning any profit-earning undertaking, such as a waterworks, is chargeable only upon its actual trading profits; but it is not taxable in respect of any part of that undertaking by which it earns no profit, although it cannot set off the expenses of that part against trading profits. The fact that it carries on that part in the discharge of a statutory duty, such as a duty to supply water for domestic purposes without payment other than a compulsory rate, does not make it taxable for that part. But a local authority owning any undertaking which is not carried on for profit at all, such as a slaughter-house or sewage purification works, is taxable under Schedule A in respect of its annual value.[68]

A harbour authority which makes profits is taxable for them under Schedule D, although they must by statute be devoted to the improvement of the port, and similar public purposes,[69] or to the repayment of loans;[70] for "there is nothing in the nature of things, nothing in the words of the Act to say that when an income has been actually earned, when an actual profit upon which the tax is put has been earned and received by any person or corporation, Her Majesty's right to be paid the tax out of it in the least degree depends upon what they are to do with it afterwards, except in certain excepted cases such as charitable trusts and some others."[71] Further, a statutory direction that the proceeds are to be devoted to certain purposes does not make it unlawful to pay income tax out of the proceeds.[72]

In order to be liable to income tax, an "inland navigation" must be one which owns the property over which the navigation takes place, and makes a profit by carrying on that property;[73] the fact that the navigation is that of a tidal estuary does not prevent it from being an "inland navigation." Accordingly,

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[66] *Inland Revenue* v. *Glasgow Gas Commrs.* (1876), 3 R. 857; 1 Tax C. 122.

[67] *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575. See also p. 138.

[68] See Chap. 2, "Property not carried on for Profit," p. 29.

[69] *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891.

[70] *Souvey* v. *King's Lynn Harbour, etc. Commrs.* (1887), 2 Tax C. 201.

[71] *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891, *per* Lord BLACKBURN, at 910; the distinction between expenses incurred in earning profits and expenditure of profits after they are earned, is again emphasised in *Port of London Authority* v. *Orsett Union*, [1920] A. C. 273. On the same principle a burial board is taxable though its profits go in relief of the poor rates: *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9, see p. 76. See also *Carnoustie Golf Course Committee* v. *I. R.*, 1929 S. L. T. 366, p. 72.

[72] *Mersey Docks* v. *Lucas*, *per* Lord SELBORNE, at 901, 902; see also *Corporation of Dublin* v. *M'Adam*, 20 L. R. Ir. Ex., *per* PALLES, C.B., at 515; *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B., *per* POLLOCK, B., at 581.

[73] *Humber Conservancy Board* v. *Baker*, [1914] 3 K. B. 449.

the Humber Conservancy Board, who owned that property, were held to be liable not merely in respect of "tolls,"[74] but also because they were an "inland navigation" in respect of statutory contributions towards the maintenance of the navigation from railway companies and another navigation authority, which were not of the nature of tolls. But where a navigation authority does not own that property, it is not an "inland navigation," nor are the dues that it levies "tolls," within the meaning of No. III of Schedule A, and it is not taxable.[75] A fishing board may be chargeable (under Case VI) which raises its expenses by taking fees for fishing licences, although it does not own the fisheries which it protects, and receives no tolls.[76] A burial board which has a public duty to provide a burial ground, or which devotes its profits to public purposes (*e.g.*, in relief of rates), is liable to tax in respect of those profits,[77] equally with a cemetery company which distributes its profits among its shareholders.[78]

In reference to certain concerns of the classes above considered, it has been held that express exemptions in local Acts from payment of taxes apply to the income tax.[79]

What is a Separate Trade?—The question often arises whether a part of the operations of a company, etc., forms a separate trade. Where an assurance company[80] carries on life assurance business (which includes the business of granting annuities),[81] that is to be treated as a separate business from any other class of business carried on by the company.[82] Subject to life assurance business being thus kept separate, where an insurance company invests the money not immediately required for the purpose of meeting claims or of complying with the laws of

[74] These are specifically mentioned in Sched. A, No. III, r. 3, see p. 74

[75] *I. R.* v *Forth Conservancy Board*, [1929] A. C. 213, assuredly the transfer to Sched. D does not make them taxable under Case I; but they have since been held to be taxable under Case VI: *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540, see p. 535.

[76] *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484, in which the contrary was decided, was all but overruled by the House of Lords in *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540; see above.

[77] *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9; *Portobello Town Council* v. *Sulley* (1890), 37 S. L. R. 863; 2 Tax C. 647.

[78] *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516; see *per* Lord MACMILLAN in *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 469; as to the calculation of those profits, see p. 141.

[79] *E.g.*, an inland navigation, in *Stewart* v. *Thames Conservators*, [1908] 1 K. B. 893; a ferry, in *Pole-Carew* v. *Craddock*, [1920] 3 K. B. 109; see p. 294. Cf. *Argyle (Duke)* v. *I. R.* (1913), 7 Tax C. 225.

[80] For definition, see p. 64, note [14].

[81] S. 237, see p. 453.

[82] Sched. D, Cases I and II, r. 15 (1), see pp. 121—123. This rule makes inapplicable the previous decisions to the contrary in *Last* v. *London Assurance, etc.* (1884), 12 Q. B. D. 389, see p. 122 (this case went up to the House of Lords upon other points); *Scottish Union, etc.* v. *Smiles* (1889), 16 R. 461; 2 Tax C. 551; and *Liverpool and London and Globe, etc.* v. *Bennett*, [1912] 2 K. B. 41; [1913] A. C. 610; but only to the extent stated in the text. "Capital redemption business" is to be treated as a separate business: Act of 1938, s. 27 (1), (3), (4), see p. 604.

countries in which it carries on business, or invests its accumulated profits and derives interest from its investments, these operations do not form a separate trade;[83] and the company is chargeable in respect of the profits derived from them.[84] A mutual insurance business carried on by the members for their own benefit forms a separate trade from the non-mutual business done by the same company;[85] and a members' golf club may carry on a separate trade in connection with visitors' green fees.[86] On the other hand, it has been decided that a company which made loans partly on the security of produce shipped to this country, and partly on that of real property in British colonies, could not claim to distinguish these two branches of its business so as to be taxed under Case IV instead of Case I on the profits of the second branch; but it is submitted that this might legitimately be done in any case in which the accounts of the two branches were not inextricable.[87] The cases decided in connection with charitable institutions show that these may be engaged in trades distinct from their main business, which is non-commercial.[88] In the same way a private person may carry on a breeding-stud as a hobby, and not on commercial principles; but if he also lets out stallions for profit, that operation may of itself constitute a trade.[89]

An individual may carry on the trade of publishing a magazine, and the separate profession of editing the magazine and writing articles for it.[90]

A company owning a whole ship is carrying on a trade separate from that of another ship in which it owns only a share.[91] Where a company owns ships trading between this country and another, the arrangement of cargoes and freights for the return voyage by a separate board of directors in the other country does not constitute a separate trade.[92] Underwriting and shipowning may be separate trades though carried on by the same

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[83] *Liverpool and London and Globe, etc.* v. *Bennett, supra.*

[84] As regards life assurance funds, this is confined to the part received in this country: see p. 219, note [12].

[85] *New York Life, etc.* v. *Styles, supra*, p. 72.

[86] *Carlisle and Silloth Golf Club* v. *Smith*, p. 72. See also *Nat. Assen. of Local Government Officers* v. *Watkins, ibid.* In *Fry* v. *Salisbury House Estate, Ltd.* (see p. 71), although the letting of flats was held not to be a trade, liability to tax had been admitted on profits derived from heating and cleaning them.

[87] *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, see p. 95.

[88] See pp. 69, 73. In any case to which the exemptions granted by Act of 1924, s. 23, or Act of 1927, s. 24, do not apply, the expenses of the non-taxable main business cannot be set off against the profits of the taxable trade.

[89] *Derby (Earl)* v. *Bassom* (1926), 42 T. L. R. 380; cf. the cases cited p. 58, note [42].

[90] *I. R.* v. *Maxse*, [1919] 1 K. B. 647 (excess profits duty).

[91] *Farrell* v. *Sunderland S. S. Co.*, see p. 71. Cf. *Birt, Potter and Hughes, Ltd.* v. *I. R.* (1927), 12 Tax C. 976 (excess profits duty); and contrast *I. R.* v. *Turnbull, Scott & Co.* (1924), *ibid.* 749; 132 L. T. 296.

[92] *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208; see note [8], p. 79. Contrast *Tarn* v. *Scanlan, Muller* v. *Latham*, p. 94.

company.[93] The manufacture of shells during the last war was found not to be a separate trade from that of the boiler works in which it was carried on.[94] The manufacture and sale of railway wagons, and the hiring-out of such wagons, may form a single trade.[95] All the farming carried on by a particular person or partnership or body (and treated as a trade) is to be treated as one trade.[96]

Trade carried on in the United Kingdom or elsewhere—It has already been stated[97] that the tax is leviable under Schedule D on the profits of a trade carried on in the United Kingdom or elsewhere. This statement requires expansion. A person residing in the United Kingdom is taxable under Case I of Schedule D on the whole profits of a trade which he carries on in the United Kingdom,[98] even if the trade is only in part carried on in this country.[99] If, however, the trade of a person so resident is carried on entirely outside the United Kingdom, he is not taxable under Case I, but is taxable only in respect of that portion of the profits which he receives in the United Kingdom, and his assessment is made under Case V.[1] A person not resident in the United Kingdom is taxable under Case I on the whole profits of any business exercised by him in the United Kingdom.[2] It is immaterial whether the person carrying on the trade is a British subject or not.[3]

Difficult questions arise, first, as to what constitutes residence in the United Kingdom, both in the case of an individual, and in the case of a company; secondly, as to how far a trade which at first sight appears to be carried on, at least in part, outside the United Kingdom, is carried on by a person resident in the United Kingdom; and thirdly, as to whether a person resident outside the United Kingdom is carrying on a trade within it. So far as the first question applies to an individual, it is discussed in Chapter 12; in this chapter it is, however, proposed to discuss the first of these questions as far as it applies to companies; the second question. which is bound up with this

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[93] *Scales* v. *G. Thompson, Ltd.* (1928), 138 L. T. 331; *Devon Mutual Assn.* v. *Ogg* (1927), 13 Tax C. 184; see note [91].

[94] *Howden Boiler and Armaments Co., Ltd.* v. *Stewart*, 1925 S. C. 110.

[95] *Gloucester Carriage and Wagon Co., Ltd.* v. *I. R.*, 1925 A. C. 469 (corporation profits tax); cf. *T. Beynon, Ltd.* v. *Ogg*, p. 105. See also cases on "Succession," pp. 149—150.

[96] Act of 1941, s. 10 (3); see p. 651. As to poultry farming, see p. 59, note [46].

[97] See p. 68.

[98] Sched. D, 1 (a) (ii): Rule applicable to Case I, see p. 472.

[99] Like that of a travelling representative of English manufacturers, who resides here but sells goods for them in the East: *Spiers* v. *Mackinnon* (1929), 8 A. T. C. 197.

[1] Where the word "possession" includes "trade": *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, see p. 80. Relief from double taxation is given (contingently on a reciprocal arrangement with the foreign country or Dominion concerned) to the businesses of shipping and air transport by Finance Act, 1923, s. 18, see p. 519; as extended by Act of 1924, s. 31, see p. 492, and No. 1 Act of 1931, s. 9, see p. 564

[2] Sched. D, 1 (a) (iii): Rule applicable to Case I, see p. 472.

[3] Sched. D, 1 (a) (i), (iii).

aspect of the first; and the third, which involves matters that may compendiously be described as "agency."[4]

"Residence" of Companies and Partnerships: Registration—The question whether individuals reside in the United Kingdom or not can be determined without reference to the business which they own or carry on, and is dealt with in Chapter 12. But a limited company can only be "resident" in an artificial sense of the word. The country of incorporation is not conclusive of the place of its residence; and a company registered in the United Kingdom is not resident there for income tax purposes if "the central management and control" if its business, or, in other words, "the head and seat and directing power," are wholly situate outside this country. The country of incorporation is looked upon as being only one among many factors, which may indicate where the head and seat and directing power are situate.[5] Thus companies registered in the South African Republic,[6] in Cape Colony,[7] in New Zealand,[8] and in the United States,[9] have been held to be resident in the United Kingdom, because the head and seat and directing power were in London. And the operations of subsidiary companies incorporated abroad have been held in certain cases to form part of the trade of principal companies resident in this country.[10]

A company may, however, have more than one "residence," and if it is incorporated and has its registered office in the United Kingdom, and transacts there a sufficient amount of business so that it can be said that its central management and control are divided between the United Kingdom and a foreign country, the company may be resident in the United Kingdom,[11] although the "real control and management of the company" are found as a fact to be in Sweden.[12]

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[4] So far as "agency" bears on the machinery of collection as apart from the imposition of liability, it is considered in Chap. 12, p. 270.

[5] *Egyptian Delta Land, etc. Co., Ltd.* v. *Todd*, [1929] A. C. 1, where the House of Lords approved (among other cases) *Att.-Gen.* v. *Alexander* (1874), L. R. 10 Ex. 20; *Cesena Sulphur Co.* v. *Nicholson*; *Calcutta Jute Mills* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Association* v. *Nicholson* (1877), 1 Tax C. 139; *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, see pp. 82, 83.

[6] *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136, see p. 83, note [12].

[7] *De Beers Consolidated Gold Mines, Ltd.* v. *Howe*, [1905] 2 K. B. 612; [1906] A. C. 455, see p. 83.

[8] *New Zealand Shipping Co.* v. *Stephens* (1907), 5 Tax C. 553; *The same* v. *Thew* (1922), 8 Tax C. 208, see p. 77.

[9] *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163.

[10] See p. 86.

[11] *Swedish Central Ry.* v. *Thompson*, [1925] A. C. 495; the only income of the company arose from a rent in Sweden, and it was held to be assessable on the whole of that income under Sched. D, Case V, r. 1, see p. 481. Under that rule residence in this country is sufficient to establish liability; and except so far as it might affect the question of residence, it was immaterial in what country the company's business was carried on. It was not on this ground, however, that in the *Egyptian Delta Case* (see note [5]) *Swedish Central Ry.* was distinguished. The statement in the text of the effect of these two decisions is based on Lord SUMNER'S opinion, [1929] A. C. 16 *sqq.*, in which the whole history of this matter will be found.

[12] Set out in 9 Tax C. 346.

The cases bearing on the situation of control and management of companies are considered in more detail below.[13]

A partnership, the control and management of whose business is situate abroad, is deemed to be resident outside the United Kingdom and assessable to the same extent, and no more, as a person resident abroad (and not having a residence in this country), although some of the partners may be personally resident in this country.[14]

Trade carried on entirely outside the United Kingdom—The profits of a trade carried on entirely outside the United Kingdom are not taxable under Case I, even if the trade belongs in part to a person residing in the United Kingdom.[15] At first sight the opening words of Schedule D[16] seem wide enough to make the whole profits of such a trade taxable; but "the whole Schedule must be read together. . . . Unquestionably the rules applicable to a particular 'Case' may cut down, and cut down very materially, the charging words in the earlier part of Schedule D."[17] The machinery of assessment provided by the Act is not applicable to those profits, except as to that portion which is received in this country.[18]

Trade carried on partly within and partly outside the United Kingdom—*Colquhoun* v. *Brooks*[19] was the case of a partner in a business carried on in Australia who resided in England and did not in fact exercise any control over the business, though his partnership agreement entitled him to do so if he desired. The contrast between this case and that of *Ogilvie* v. *Kitton*[20] shows clearly the line that has to be drawn for purposes of income tax between trades carried on exclusively outside the United Kingdom, and those carried on partly or wholly within the United Kingdom. Both cases deal with individuals and not with companies. In the latter case the appellant, who resided in Scotland, was the owner of a business locally situate in Canada; he had the sole right of control; the managers and other employees were his servants and could not act without his authority, and statements of all their transactions were

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[13] See "Head and Seat and Directing Power," pp. 82 *sqq.*

[14] Sched. D, Cases I and II, r. 12, see p. 478; *Sulley* v. *Att.-Gen.*, see p. 89. In respect of the profits of any trade carried on in this country, the firm may be assessed in the name of any partner resident in this country, see p. 265.

[15] *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493.

[16] Sched. D, 1 (a) (ii), and rule applicable to Case I, see p. 42.

[17] *Per* Lord MACNAGHTEN, 14 App. Cas. 514—15.

[18] That portion is taxable under Case V, r. 2, see p. 481; the machinery provisions on which the conclusion stated in the text is founded by Lord HERSCHELL (14 App. Cas. 506—508) are ss. 106 and 108 of the Act of 1842, the relevant portions of which are now replaced by Sched. D, Misc. Rules, r. 4. His Lordship refers also to r. 3 (now r. 10) of Sched. D, Cases I and II, see p. 476, and to s. 39 of the Act of 1842, now replaced by Sched. D, Misc. Rules, r. 2, see p. 482, and r. 3 of the General Rules, see p. 487. See also *per* Lord MACNAGHTEN, at 515, 516.

[19] *Supra.* [20] 1898 S. C. 1003; 5 Tax C. 338.

sent him weekly. Although, in fact, he had not found it necessary to intervene, he was held to be carrying on a business in the United Kingdom and to be taxable under Case I on the whole of the profits whether received in this country or not.

Midway between the two cases last described lies that of a bank whose head office is in this country, but which carries on operations in foreign countries through branches established there. Such a bank is carrying on a single business, and it is taxable in the United Kingdom upon the whole of its profits;[21] on the other hand, if the bank does not " reside " in this country, but carries on a branch of its business here, it is taxable only on the profits of the branch.[22] Further, where the corporeal subject of the trading (such as a railway) is situate in a foreign country, the company which carries on the railway, although it has no other business, is taxable on the whole of the profits if the head and seat and directing power, or, in other words, if the " conduct and management, the head and brain of the trading adventure " are situate in this country;[23] but if the corporeal subject (in this case a hotel) is situate abroad, and the conduct and management are also outside this country, the company is not taxable under Case I but under Case V.[24] The principle was stated thus in *Mitchell* v. *Egyptian Hotels, Ltd.*:—[25]

" Where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad, he is chargeable to income tax under Case V of Schedule D if he takes no part in earning those profits, and if he takes any part, is chargeable under Case I. This is true whether the proprietor is a natural or an incorporated person; whether he takes part in earning the profits in his own person or only by agent or servants. The question is whether the profits are wholly or partly earned from a business wholly or partly carried on in the United Kingdom. If he takes a part at home in earning the profits, its importance relatively to that taken by his agents abroad does not matter, nor does the liability to be charged under Case I depend on active interference. Control exercised here over business operations abroad though they are far greater in volume or magnitude, will suffice for Case I: *San Paulo (Brazilian) Ry.* v. *Carter*.[26] So, too, will mere oversight regularly exercised, even though actual intervention never becomes necessary, everything abroad going smoothly without it: *Ogilvie* v. *Kitton*.[27] Some actual participation in carrying

[21] *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, see p. 115.
[22] *Att.-Gen.* v. *Alexander* (1874), L. R. 10 Ex. 20.
[23] *San Paulo (Brazilian) Ry.* v. *Carter*, [1896] A. C. 31, see p. 83.
[24] *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022, see p. 85; contrast *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208, see p. 79.
[25] *Per* Lord SUMNER, [1915] A. C. 1039—40.
[26] [1896] A. C. 31, see note [23].
[27] 1908 S. C. 1003, 5 Tax C. 338, see p. 80.

on the trade is necessary, though it may not go beyond passive oversight and tacit control. It is not enough that the proprietor merely has the legal right to intervene: otherwise *Colquhoun* v. *Brooks*[28] would have been otherwise decided; for there the respondent was entitled to intervene at any time, though in fact he never did so, but took his share of the profits just as they happened to be earned by those in control abroad."

Head and Seat and Directing Power—Although the head and seat and directing power of a company may, as was decided in *Swedish Central Ry.* v. *Thompson*,[29] be divided and situate in more than one country, it is clear from the decision in *Egyptian Delta Land Co.* v. *Todd*,[30] that the question whether they are (wholly or partly) situate in the United Kingdom must be answered in order to see whether the company is resident here[31] and carries on a trade here, so as to be taxable on the whole of the profits.

The question is one of fact; and if the Commissioners have recorded a finding upon this question, the Courts will not interfere unless they are satisfied there was no evidence before the Commissioners upon which that finding could be reached.[32]

The head and seat and directing power of a company and the control and management of its business may be situate in this country, even though the business is concerned solely with an undertaking whose physical situation is in a British possession or a foreign country. Thus. companies have been held to be resident and carrying on trade in the United Kingdom, where the trade was that of a sulphur mine in Italy,[33] of a jute mill in India,[34] of gasworks in continental countries,[35] of a hotel in Colorado,[36] of a railway in Brazil,[37] of oil wells in Galicia,[38] of breweries in the United States,[39] of cotton mills in the United States.[40] On the other hand, in the case of two hotels in Egypt, the head and seat and directing power were held to be situate

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[28] 14 App. Cas. 493, see p. 80.
[29] [1925] A. C. 495, see p. 79.
[30] [1929] A. C. 1, see p. 79.
[31] The question of "residence" also has an important bearing on assessment in regard to foreign possessions under Cases IV and V of Sched. D: see Chap. 9. The *Swedish Central Case, supra*, arose under Case V, r. 1, in respect of a rent, not of a trade: see p. 79, note [11].
[32] *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, see p. 88; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553, see p. 83; *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163, see p. 84; *New Zealand Shipping Co., Ltd.* v. *Thew* (1922), 8 Tax C. 208, see p. 83
[33] *Cesena Sulphur Co., Ltd.* v. *Nicholson* (1876), 1 Ex. D. 428.
[34] *Calcutta Jute Mills, Ltd.* v. *Nicholson* (1876), 1 Ex. D. 428.
[35] *Imperial Continental Gas Assocn* v. *Nicholson* (1887), 1 Tax C. 138.
[36] *Denver Hotel Co., Ltd.* v. *Andrews* (1895), 3 Tax C. 356.
[37] *San Paulo (Brazilian) Ry.* v. *Carter*, [1896] A. C. 31.
[38] *Grove* v. *Elliots and Parkinson* (1896), 3 Tax C. 481.
[39] *Frank Jones Brewing Co., Ltd.* v. *Apthorpe* (1898), 4 Tax C. 6; *U. S. Brewing Co., Ltd.* v. *Apthorpe, ibid.* 17; *St. Louis Breweries, Ltd.* v. *Apthorpe, ibid.* 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co., Ltd.* (1899), *ibid.* 41.
[40] *American Thread Co.* v. *Joyce* (1913), 6 Tax C. 1, 163.

in that country and not in the United Kingdom.[41] The question depends on the facts of the management and not on the physical situation of the thing that is managed.

If the meetings of the directors who manage the business are held in the United Kingdom, the "head and seat and directing power" are situate there. The residence of one or more directors in the country where the physical subjects of the trade are situate is not enough to transfer the head and seat and directing power to that country if their powers are delegated to them by, and their actions are subject to the control of, the board in this country,[42] even though no such control is in fact exercised, so long as the board retains the right of revoking the delegated powers.[43] Still less does it affect the matter if the representative abroad is a servant of the company and not a director.[44] On the other hand, if the actions of the directors residing abroad are not subject to the control of the directors in this country, the head and seat and directing power may be situate outside the United Kingdom; and if the operations of the trade are situate wholly abroad, there is no trade exercised in this country.[45] But if any part of the operations of a company, registered and resident in the United Kingdom, is situate in this country, though controlled solely by a director or directors resident abroad, the company exercises a trade in the United Kingdom.[46] Where the directors in this country control only that part of the trade which is carried on in the United Kingdom, the company is chargeable only in respect of the profits of that part.[47] Cases in which there is a separate or subsidiary company abroad will be discussed below.[48]

This matter is so important as to require that some of these cases should be considered in more detail. In *De Beers Consolidated Gold Mines* v. *Howe*,[49] the trade was not only the owning and working of diamond mines in Cape Colony, but the sale of the diamonds got in those mines to a syndicate in London. The company was registered, its head office (so called) was situate, and its general meetings were held, in Cape Colony;

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[41] *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022.

[42] *Cesena Sulphur Co.* v. *Nicholson, Calcutta Jute Mills* v. *Nicholson, Frank Jones Brewing Co., Ltd.* v. *Apthorpe*, see p. 82, *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136; *De Beers Consold. Gold Mines, Ltd.* v. *Howe*, [1905] 2 K. B. 612; [1906] A. C. 455; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553; *The same* v. *Thew* (1922), 8 Tax C. 208.

[43] *Noble, Ltd.* v. *Mitchell* (1926), 43 T. L. R. 102.

[44] *San Paulo (Brazilian) Ry.* v. *Carter, supra*; *Grove* v. *Elliots and Parkinson*, see note [88]; cf. *Ogilvie* v. *Kilton*, p. 80.

[45] *Mitchell* v. *Egyptian Hotels, Ltd.*, *supra*.

[46] *John Hood, Ltd.* v. *Magee*, [1918] 2 Ir. R. 34; 7 Tax C. 327; *Aramayo Francke Mines, Ltd.* v. *Eccott*, [1925] A. C. 634. See also *Egyptian Delta* and *Swedish Central Railway* cases, pp. 79, 82.

[47] *Att.-Gen.* v. *Alexander* (1874), L. R. 10 Ex. 20, see p. 81.

[48] See p. 86.

[49] The facts appear in [1905] 2 K. B. 612; as to the effect of registration, see p. 79.

but by the articles of association four at least of the directors were bound to reside in England, and a clear majority of them were in fact so resident. Weekly meetings of directors were held in London as well as at Kimberley, the financial operations and the selling of the diamonds were carried on in London, and a large portion of the profits was due to the judicious mode in which the sale was regulated. "It is in London that the governing work of the company is done, and where the principal officers of the company meet in greatest numbers and consult and determine its business."[50] The company was held to be taxable under Case I on the whole of its profits.

Cotton mills in the United States were the subject of the trade in *American Thread Co.* v. *Joyce*,[51] but none of the produce was sold in the United Kingdom. The mills were the property of an American company which had been promoted, and the whole of the commou stock of which was owned, by an English company. The board of the American company met weekly in New York, and the directors resident in America formed an executive committee which directed the current business between those meetings, and reported to each director, wherever resident. A majority, however, resided in this country; extraordinary meetings were to be held in Great Britain, and powers were reserved to these meetings to select the executive committee and to fix its remuneration and the term of its office, to appoint the higher-paid officers of the company, to borrow money on the company's credit, and so on. The meetings in England were in fact held every fortnight; they criticised and called for information not only as to dividends and finance, but also with regard to the working of the various mills both on its technical and its trading side. "The whole purse-strings in the sense of money coming in by borrowing" were "kept most zealously at Manchester."[52] "The directorate in Manchester was a directorate of paramount authority, as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this, that as the Commissioners found, they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and trading."[53] It was held that the Commissioners had evidence before them on which they could come to the conclusion of fact at which they arrived, that the head and seat and directing power of the company were in the United Kingdom, and that therefore the company was liable to tax under Case I upon the whole of its profits.

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[50] *Per* PHILLIMORE, J., at 632.
[51] (1913), 6 Tax C. 1, 163, see p. 82, see also *Bradbury* v. *English Sewing Cotton Co., Ltd.*, [1923] A. C. 744, pp. 2.6—2.9.
[52] *Per* COZENS-HARDY, M.R., at 29.
[53] *Per* Viscount HALDANE, L.C., at 164.

In *Mitchell* v. *Egyptian Hotels Co.*[54] again, the business being that of two hotels in Egypt, no transactions which actually earned profit were carried on in this country; but in this case there was no constant supervision and guidance by a board of directors in this country; there was a local board in Egypt, under whose orders the hotels were managed by the company's servants. The board of directors in the United Kingdom retained the rights to fix the remuneration of the local board, and to decide at what period a balance of profit or loss should be struck; but they had not in fact exercised either of these rights. The accounts were made up in Egypt to the end of the usual financial year, and reported by the local board to the board of directors for the annual general meeting of the company, which was held in London. The board of directors met only once during the year of assessment, when they recommended a dividend and authorised the raising of a loan out of which to pay it, rather than withdraw money from Egypt and thus deplete the working capital in that country. It was held that the company was not liable to pay tax under Case I on the whole of its profits, but only under Case V upon such part as was remitted to this country. It will be observed from this decision that the mere operations of declaring a dividend, and of raising capital, are not sufficient to place the control and management of the business in this country, so as to constitute a "trade carried on in the United Kingdom"; nor is an ultimate right of control sufficient, if it is not exercised in fact.[55] But either of these factors will probably be sufficient to make the company "resident" in the United Kingdom.[56]

In *Swedish Central Ry.* v. *Thompson*,[57] the company owned a railway in Sweden which was let on lease, and for which it received rent. It was incorporated and had its registered office in the United Kingdom. The general meetings of the shareholders and the meetings of the board were held in Sweden, the rent was paid there, dividends were declared there, and no part of the profits was remitted to this country, except what was required for payment of dividends to shareholders and interest to debenture-holders in the United Kingdom; the majority of the shareholders were of Swedish nationality. There was a banking account in London; a committee of three of the directors was empowered to draw cheques on that account, to deal with transfers, and to seal stock and share certificates. Transfers of shares were made and registered in London, where the accounts of the company were made up and audited. The

[54] See p. 81.
[55] See p. 82.
[56] See *Swedish Central Ry.* v. *Thompson*, [1925] A. C. 495; cf. *Aramayo Francke Mines, Ltd.* v. *Ecott*, [1925] A. C. 634, see p. 83.
[57] [1925] A. C. 495, see *per* Lord CAVE, L.C., at 499, 500; 9 Tax C. 342, at 344-5; see pp. 79, 82.

company was held to be "resident" in the United Kingdom and to be taxable in respect of the rent under rule 1 of Case V.[58]

The business of the *Egyptian Delta Land Co.*[59] was the holding and development of land in Egypt. The directors resided permanently in Egypt, all meetings of the company and of the board were held there; the register of transfers was kept and certificates were issued in Cairo, the accounts were made up and audited there; dividends were declared in Cairo, and paid there only. The company was registered in this country and had its registered office in London, where the transfers of shares were kept, and where there was a secretary who did formal business and occasionally dealt with correspondence from shareholders. The company was held not to be resident in the United Kingdom.

Separate or Subsidiary Companies—Where a company which resides or carries on business in the United Kingdom has relations with another company which carries on operations abroad, the question often arises whether those operations form part of the business of the former company; in other words, whether the latter company is independent of the former or subsidiary to it. The answer to this question depends not on the financial control, not, that is to say, on the ownership of the greater part or the whole of the shares in the second company, but on the direction of the business.[60]

Owing to the conditions imposed by the company laws of certain of the United States, many of the companies in regard to which such questions have arisen have been companies incorporated there to carry on business in which British companies were actively interested. The mere fact that the British company holds the majority of the shares (or all that the American law applicable allows), is not sufficient to make it taxable under Case I on the whole of the profits of the American company, even though the consent of the English company is sought before the American declares a dividend.[61]

"A company may control another company; but it does not necessarily follow because an individual controls the company, or the company controls the company, or the company controls

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[58] No question therefore arose as to the carrying on of a trade; but see "Residence," p. 79.

[59] *Egyptian Delta Land and Investment Co., Ltd.* v. *Todd*, [1928] 1 K. B. 152; [1929] A. C. 1; see pp. 79, 82.

[60] If the English company controls the business of the foreign company, then the English company is assessable under Case I on the profits of that business; if it holds shares in the foreign company without controlling the business, it is assessable on the income of those shares, under Case V, r. 1 (see p. 481): if the holding of shares is large, the question in the text may therefore become academic.

[61] *Bartholomay Brewing Co.* v. *Wyatt*, [1893] 2 Q. B. 499; as to taxation under Case V of the portion of the profits brought to this country, see p. 230; *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. 450; [1903] 1 K. B. 505.

the individual, that the business carried on by the person or company controlled is necessarily a business carried on by the controller; and particularly is that the case when the machinery of companies is used and the controller is a company."[62]

"The control of individual corporators is something wholly different from the management of the business itself. Nor is this principle less true when the holding of the individual corporator is so large that he is able to override the wishes of the other corporators in matters relating to the control of the business of the company. The extent, but not the nature, of his power is changed by the magnitude of his holding."[63]

Each case of this kind raises, however, a question of fact,[64] and where the business is carried on by means of the plant and property of the English company and with working capital provided by it, the English company may be far more than merely the holder of shares in the American company, and may stand towards the latter in the relation of principal and agent. In such a case the English company is taxable under Case I in respect of the whole profits of the American business.[65]

An English company owned all the shares in a German company; the members of the board of management of the German company were also directors of the English company, which nominated the members of the board of supervision of the German company. When the German company was first formed it had other shareholders (holding 460 out of 1,000 shares) who brought in considerable capital; their shares had all been acquired by the English company, but there was no evidence that the German company had ever become a sham company or a mere cloak for the English company. The requirements of the German company's statutes and of German company law had always been carefully fulfilled. "At any time the English company . . . might have sold any proportion of [the shares] to independent corporators, and the latter would have found the affairs of the German company in strict order, just as though it had been carried on throughout as a company in which the shares were held in many hands." It was held

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[62] *Per* PHILLIMORE, J., in *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. 459.

[63] *Per* FLETCHER MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 98.

[64] See pp. 82—86.

[65] *Apthorpe* v. *Peter Schoenhofen Brewery Co., Ltd.* (1899), 4 TAX C. 41; *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898), *ibid.* 111, as explained by FLETCHER MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 101, 102. The two former cases were distinguished in *Kodak, Ltd.* v. *Clark* (see note [62]) on the ground that the minority shareholders were not found to be independent people, as they were in the *Kodak Case*, but this ground of distinction is no longer necessary in view of the decision in *Gramophone and Typewriter, Ltd.* v. *Stanley*. In *United States Brewing Co.* v. *Apthorpe* (1898), 4 TAX C. 17, the committee that managed the American business was actually appointed by the English company. The history of the subject will be found in the judgment of SCRUTTON, L.J., in *Inland Revenue* v. *Sansom*, [1921] 2 K. B. 492, at 506 *sqq.*

that the business of the German company was not carried on by the English company, and that the latter was not liable to pay income tax upon a sum of money which had not been remitted to this country[66] because it had been written off to meet depreciation of patents.[67]

Trade exercised within the United Kingdom by a Non-Resident Person: Agency—A person, although not resident in the United Kingdom, may exercise a trade within it, so as to be taxable on the profits of that trade;[68] but that trade may of course be separate from any trade which he carries on either in his own country, or from his own country with other countries outside the United Kingdom.[69] "The question is not whether [he carries] on business in this country. It is whether [he exercises] a trade in this country so that profits accrue to [him] from the trade so exercised."[70]

The trades exercised by non-residents in the United Kingdom are usually carried on by means of what may compendiously be termed "agents"; and a resident agent is assessable in the place of a non-resident principal,[71] though if the principal comes to this country he may be assessed in his own name.[72]

The liability to tax in respect of a trade has frequently depended on the question whether the person resident in this country carries on business on his own account, or as an "agent"; but it does not turn strictly upon the relation of the parties as principal and agent under the law of contract, and it is important to bear in mind that the liability is imposed by Schedule D itself, and that the rules (with the possible exception of rule 7[73]), which provide for assessment in the name of resident persons, are merely machinery and do not themselves impose the charge. The first question therefore is whether a trade is exercised in the United Kingdom; the second whether, if so, there is in the United Kingdom a person chargeable to the tax.[74]

A non-resident person, then, is assessable in the name of, and

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[66] *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89; the passage cited appears at 101. The principle upon which the decision was based is stated above: see note [62]. It goes further than the decision in *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] 2 Q. B. 499, which is not now, therefore, of much importance.

[67] A sum so written off forms part of the profits of a company, although it is not available for distribution as dividend, see p. 109.

[68] Sched. D, 1 (a) (iii), p. 472, and see p. 78. As to residence or non-residence, see p. 265.

[69] *Att.-Gen.* v. *Alexander* (1874), L. R. 10 Ex. 20.

[70] *Per* ATKIN, L.J., in *Smidth* v. *Greenwood*, see p. 89; [1921] 3 K. B. at 593.

[71] General Rules 5 to 14, see p. 467. See also Chap. 12, p. 270.

[72] *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, see p. 92.

[73] R. 7, see p. 456; this rule does not apply to British subjects, firms or companies. It first appears with other portions of the General Rules here referred to in s. 31 (3) of the Finance (No. 2) Act, 1915, and its effect is considered p. 271.

[74] See *Crookston* v. *Furtado*, 1911 S. C. 217; 5 Tax C. 602 (see p. 90), where the two questions were kept distinct.

for any profits arising to him directly or indirectly through, any factor, agent, receiver, branch or manager (whether such factor, etc., receives the profits or not),[75] as well as any resident person with whom he carries on business under some arrangement by which the resident person gets little or no profit;[76] but business done through a broker or general commission agent (not being an authorised person carrying on the regular agency of the non-resident),[77] does not make the non-resident person chargeable, nor does such a person become chargeable under these rules merely by reason of any transactions with other non-residents.[78] There are special provisions applying to the estimation of profits in certain of these cases; where the true profits of the business carried on in this country cannot readily be ascertained, the Commissioners may estimate them at a percentage of the turnover;[79] and upon application, profits of manufacture and production outside the United Kingdom will be eliminated, and the assessment made or amended accordingly.[80]

Trade exercised by a Resident Person on behalf of a Non-Resident—The mere employment of an agent or setting up of a branch in this country to buy goods for export and for sale in another country does not constitute the exercise of a trade within the United Kingdom even if the branch is conducted by a partner.[81] This was decided under the Act of 1842, but is still good law; although it is true that if a trade were actually exercised within the United Kingdom, the rules of assessment would now make a branch of any kind chargeable with the tax.[82] Where an American firm and an English firm carried on, on joint account, transactions in cotton bought in America

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[75] General Rules, rr 5, 6, see p. 487; these rules (like their predecessors in s. 31 of the Finance (No. 2) Act, 1915) provide only for the method of assessment, and do not impose a fresh liability. *Greenwood* v. *Smidth*, [1921] 3 K. B. 583; [1922] 1 A. C. 417, see p. 90; *Maclaine* v. *Eccott*, *infra*. The profits of an English company which has an agent abroad controlling its business, who has in his turn an agent in England, cannot be assessed by assessing the foreign agent in the name of the English agent. *Aramayo Francke Mines* v. *Eccott*, [1925] A. C. 634.

[76] R. 7, see note [73].

[77] R. 10, see p. 488; *Gavazzi* v. *Mace*, *Boyd* v. *Stephen* (1926), 135 L. T. 634. See Act of 1925, s. 17, p. 526, which seems to get rid of the distinction made between a broker and regular agent in *Wilcock* v. *Pinto*, [1925] 1 K. B. 30, see p 93.

[78] R. 11, *Maclaine* v. *Eccott*, [1926] A. C. 424; *Muller* v. *Lethem*, [1927] 1 K. B. 780; 13 Tax C. 126, see p. 90. Neither r. 10 nor r. 11 prevents the non-resident person from being chargeable in the name of his agent where the agent in fact receives the profits: *Scales* v. *Atalanta Steamship Co.* (1925), 41 T. L. R. 591; *Maclaine* v. *Eccott*, [1926] A. C. *per* Lord CAVE, L.C., at 436.

[79] General Rules, r. 8, see p. 488; see note [73] on previous page and p. 272. Whatever may have been the limits of its application when it was first enacted as s. 31 (4) of the Finance (No. 2) Act, 1915, r. 8, where it now stands, may be applied in any case where a non-resident is charged in the name of a resident.

[80] R. 12, see p. 489; see also p. 272.

[81] *Sulley* v. *Att.-Gen.* (1860), 29 L. J. Ex. 464; the branch was carried on by a partner resident in England; the goods bought by him were sold in America; this decision was approved in *Grainger* v. *Gough*, see p. 90; but not followed in *John Hood, Ltd.* v. *Magee*, [1918] 2 Ir. R. 34; 7 Tax C. 327, see p. 83.

[82] See above; *Greenwood* v. *Smidth*, [1921] 2 K. B. 583; [1922] 1 A. C. 417, see p. 90.

and usually sold in this country (though on rare occasions sold in America), the profits of these transactions were held to be profits of a trade exercised in the United Kingdom.[83]

In the inquiry whether a non-resident person exercises a trade in this country so that profits accrue to him therefrom,[84] "it must now be taken as established that, in the case of a merchant's business, the primary object of which is to sell goods at a profit, the trade is (speaking generally) exercised or carried on . . . at the place where the contracts are made. No doubt reference has sometimes been made to the place where payment is made for the goods sold or to the place where the goods are delivered, and it may be that in certain circumstances these are material considerations; but the most important, and, indeed, the crucial, question is, where are the contracts of sale made?"[85] This test is not confined to the sale of goods: it is equally applicable to such businesses as the transmission of telegraphic messages[86] or the carriage of goods by sea.[87]

If, then, contracts which entitle the persons making them to receive profits are habitually made in the United Kingdom by or on behalf of a non-resident, he is so exercising a trade in the United Kingdom, even though the fulfilment of the contracts takes place wholly or in part abroad.[88] But if the contracts are made abroad, the mere fact that they have been secured through canvassing done,[89] or that help has been given in the negotiation and execution of the contracts,[90] by an agent resident in this country does not by itself constitute the exercise of such a trade.[89] On the other hand, the non-resident person may be carrying on such a trade in this country, and a resident person may be his agent for the purpose, although the property in the goods to be sold passes to the agent and although the goods are sold in this country by the agent to his customers under contracts which do not bind the non-resident principal.[91]

"There is a broad distinction between trading *with* a country and carrying on a trade *within* a country. . . . Many merchants and manufacturers export their goods to all parts of the world, yet I do not suppose that any one would dream of saying that they exercise or carry on their trade in every country in which

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[83] *Morden, Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450.
[84] *Per* ATKIN, L.J., *loc. cit.* in note [79] on p. 88.
[85] *Maclaine* v. *Eccott*, [1926] A. C. 424, *per* CAVE, L.C., at 432. The earlier cases cited in notes [86]—[88], below, were approved or followed, and *Crookston* v. *Furtado*, 1911 S. C. 217, was overruled on this point.
[86] *Erichsen* v. *Last* (1881), 8 Q. B. D. 414, see p. 91.
[87] *Tarn* v. *Scanlan*; *Nielsen* v. *Collins*; *Muller* v. *Lethem*, [1928] A. C. 34, see p. 94.
[88] *Erichsen* v. *Last*, *supra*; *Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753; *Wilcock* v. *Pinto*, [1925] 1 K. B. 31; *Maclaine* v. *Eccott*; *Tarn* v. *Scanlan*, *supra*; cf. *Lovell & Christmas, Ltd.* v. *Commr. of Taxes*, [1908] A. C. 46.
[89] *Grainger & Son* v. *Gough*, [1896] A. C. 325.
[90] *Greenwood* v. *Smidth*, [1922] 1 A. C. 417.
[91] *Weiss, Biheller & Brooks, Ltd.* v. *Farmer*, [1923] 1 K. B. 226, see p. 92.

their goods find customers. . . . The word agent' obviously cannot extend to every agent for whatever purpose he may be employed, as, for example, to an advertising agent."[92]

". . . It cannot, in my opinion, be denied that the mere fact of a foreigner selling his goods to English customers does not constitute an exercise of his trade within this country, although he is trading with this country. But it was argued that the habitual employment of agents to obtain orders and transmit them abroad constitutes the act of selling to English customers an exercise of trade in this country. I am unable to accede to that argument."[93]

In some of the decided cases it was sought to show that the person assessed as agent was in fact a principal;[94] in none of them was this contention made out; but where it can be shown that the person resident in this country *bona fide* acquires the property in the goods consigned to him, sells them for his own profit and bears the risk of loss, the fact that (as is the practice in regard to many classes of goods) the resident is obliged to adhere to a list of prices fixed by the non-resident would not be sufficient to constitute the non-resident a person carrying on a trade in this country so that profits accrue to him therefrom.[95]

The presence or absence of a non-resident's name in business directories and so forth does not of itself indicate that he is or is not exercising a trade within the United Kingdom.[96]

Course of Business between Resident and Non-Resident—The broad principles upon which non-residents have or have not been held to exercise a trade within the United Kingdom have been stated above. They cannot be illustrated without a brief statement of the course of business which led to the conclusions reached in some of the decided cases. The mere maintenance of a buying branch does not constitute the exercise of a trade.[97] A telegraph company owning marine cables connected with the Post Office telegraphs, receiving messages in the United Kingdom both at an office of their own and through the General Post Office, and employing in this country an agent and about forty clerks and electricians, was held to be exercising a trade in the United Kingdom.[98]

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[92] *Grainger* v. *Gough*, [1896] A. C., *per* Lord HERSCHELL, at 335, 337. As to receipt of the profits by the agent, see note [5] on p. 92.

[93] *Ibid.*, *per* Lord DAVEY, at 346.

[94] *E.g.*, in *Watson* v. *Sandie & Hull*, and *Weiss, Biheller & Brooks* v. *Farmer*, see p. 92.

[95] R. 7 of the General Rules was introduced, it is submitted, to prevent the revenue suffering from merely colourable arrangements of this kind; but see p. 271.

[96] *Grainger* v. *Gough*, *supra*, *Weiss, Biheller & Brooks* v. *Farmer*, see p. 92.

[97] *Sulley* v. *Att.-Gen.*, see p. 89; but see *Morden, Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450, p. 90.

[98] *Erichsen* v. *Last*, see p. 90; the contrary was argued on the ground that the cable-ends in this country were not themselves profitable. Cf. *N. Z. Commrs. of Taxes* v. *Eastern Extension Telegraph Co., Ltd.*, [1906] A. C. 526.

Several cases have been decided in regard to trade in French wines. Where orders for the wines were received in this country, whether by an agent paid on commission or otherwise, a *del credere* agent, or a branch office of the French firm, the French firm were exercising a trade in this country,[99] but the French firm were held not to be doing so where the contracts for sale and the deliveries of goods were made in France, although they employed canvassers here who solicited orders and transmitted them, and who delivered the invoices to the customers, and in some cases received and remitted the price paid for the goods.[1]

On the other hand, where a Glasgow firm effect the whole of the chartering and keep the accounts, in respect of a ship which trades with this country and is owned by a Norwegian company, the latter exercises a trade in the United Kingdom.[2]

Packers in America consigned their goods to representatives in England who invoiced the goods in their own name at prices fixed by themselves but rendered statements to the American firm, crediting themselves with commission and other charges, and remitting to or drawing upon the American firm, as the case might be; the American firm took the risk of loss and the property in the goods never passed to the English representatives. The American firm were held to be exercising a trade in this country.[3] The same conclusion was reached where the English representatives accepted orders and made delivery in this country, although they had to obtain the authority of the American company before accepting any order, and although they paid the freight (but not apparently the marine insurance) from Boston.[4]

Where the sole representatives in the United Kingdom were *del credere* agents, who sold at the best prices obtainable the gas mantles produced by a Dutch company, credited the Dutch company with the cost price of the goods sold plus ten per cent., took a commission of five per cent., and divided the balance of the profits with the Dutch company in a fixed ratio (although the property in the goods passed to the agents, and the Dutch company was not a party to the contracts between the agents and their customers), the Dutch company was found to be exercising a trade within the United Kingdom, and to be taxable in the name of its English representatives.[5]

Where a foreign bank employs a bank in the United Kingdom

[99] *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *Pommery & Greno* v. *Apthorpe* (1886), 2 Tax C. 182; *Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753.

[1] *Grainger* v. *Gough*, see p. 90.

[2] *Wingate* v. *Webber* (1897), 24 R. 939; 3 Tax C. 569.

[3] *Watson* v. *Sandie & Hull*, [1898] 1 Q. B. 326.

[4] *Thos. Turner, Ltd.* v. *Rickman* (1898), 4 Tax C. 25. The facts were very similar, and led to the same conclusion, in *Macpherson* v. *Moore*, 1912 S. C. 1315; 6 Tax C. 107. See also *Rowson* v. *Stephen* (1929), 8 *A.* T. C. 137.

[5] *Weiss, Biheller & Brooks* v. *Farmer*, [1923] 1 K. B. 226, see p. 90

to float loans on the London market, and the British bank issues prospectuses, collects the money subscribed and remits it to the foreign bank or to the borrowers, subject to a deduction of commission, the foreign bank is not in a position analogous to that of a foreign merchant selling goods in this country through an agent, and is not exercising a trade within the United Kingdom.[6]

A Danish firm resident at Copenhagen were manufacturers of machinery which they exported all over the world. They had an office in London in charge of a whole time servant, who was a qualified engineer. He received inquiries in London from potential customers, forwarded to Copenhagen particulars of their requirements, and gave purchasers in this country his advice in erecting the machinery when supplied. But the contracts for sale were made in Copenhagen and the goods shipped there f.o.b. The firm were held not to be carrying on a trade in the United Kingdom.[7]

Cotton merchants at Alexandria sold cotton to every part of the world. They had an authorised agent[8] in England who (a) sold cotton for them in this country at prices and on terms fixed by them, but had a discretion as to the persons to whom he would sell; and (b) obtained offers for the purchase of cotton, which he transmitted to the firm at Alexandria for acceptance or rejection: on receipt of instructions accepting an offer, the agent made the contract. The goods were shipped c.i.f. Bills were drawn and discounted in Alexandria, and the discounting banks forwarded them with the bills of lading attached, and presented them to the purchaser's bank in this country. The contracts, both in (a) and (b) transactions, were held to be made in England, and the Alexandria firm to be carrying on a trade in this country.[9]

A firm in Java purchased produce in Java, and were also employed there by planters and others to effect sales of produce on commission: they sold the produce through agents in England; the goods were consigned from Java direct to the purchasers, some of whom were not in the United Kingdom; the Java firm were held in so doing to be exercising a trade in the United Kingdom; but the profits assessable were held not to include the profits of sale to non-residents, where they were not received by the London agents.[10]

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[6] *Yokohama Specie Bank, Ltd.* v. *Williams* (1915), 6 Tax C. 634; the correctness of this decision was doubted in *Maclaine* v. *Eccott*, in C. A., 10 Tax C. 555, 568.

[7] *Greenwood* v. *Smidth*, [1921] 3 K. B. 583; [1922] 1 A. C. 417, see p. 90.

[8] See p 89.

[9] *Wilcock* v. *Pinto*, [1925] 1 K. B. 30, see p. 89.

[10] *Maclaine* v. *Eccott*, [1926] A. C. 424, see p. 89. In the Courts below, other classes of transactions (which cannot be briefly summarised) were also considered, and *Wilcock* v. *Pinto* was followed, 132 L. T. 173; 10 Tax C. 481. *Gavazzi* v. *Mace*, *Boyd* v. *Stephen* (1926), 135 L. T. 634; *Belfour* v. *Mace* (1928), 138 L. T. 338, were decided on similar principles.

Shipping companies in Denmark and Holland carried on services between those respective countries and England, in one case jointly with an English company, who acted as shipping agents; all the foreign companies had firms or companies in England as their shipping agents; in one case the English agent had not been appointed directly by the company, but by its managers and agents in Holland. The shipping agents accepted freights, booked passages and so forth. The companies were held to be taxable in the names of their agents; the Danish company for profits made by cargoes shipped from this country, and the Dutch companies for profits made by shipping goods or passengers to or from England, so far as the contracts were made in this country: but not as regards contracts made with residents abroad for shipments to England where the English agents did not receive the profits.[11]

Interest on Investments : Option to tax under Case III or Cases IV and V—Many forms of trade, including the business of insurance societies, involve the making of investments for the purposes of the trade. The Crown has the option of taxing the profits of the trade under Case I, or the interest from the investments under Case III or Cases IV and V;[12] and chooses the Case which gives it the highest yield of tax.[13] Relief is allowed for expenses of management.[14]

". . . Inasmuch as the Income Tax Acts do not only deal with profits in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both—that is to say, it cannot take a

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[11] *Tarn* v. *Scanlan*; *Nielsen* v *Collins*; *Muller* v *Lethem*, [1928] A. C. 34; 13 Tax C. 91. Contrast *New Zealand Shipping Co.* v. *Thew*, p. 77.

[12] See Chaps. 7 and 8; and especially *Gresham Life, etc.* v. *Styles*, *Edinburgh Life, etc.* v. *L.-A.*, and *Hancock* v. *General Reversionary, etc.* (see pp. 119, 120), where the difficult questions were discussed to which the right to deduct tax gives rise in cases of this kind.

[13] *Scottish Mortgage Co.* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165; *Smiles* v. *Northern Investment Co.* (1887), 14 R. 734; 2 Tax C. 177; *Norwich Union, etc.* v. *Magee* (1896), 3 Tax C. 457; *Revell* v. *Edinburgh Life, etc.* (1900), 5 Tax C. 221; *Liverpool and London and Globe, etc.* v. *Bennett*, [1912] 2 K. B. 41; [1913] A. C. 610; *Butler* v. *Mortgage Co. of Egypt, Ltd* (1928), 139 L. T. 29, see p. 229; *Thompson* v *Trust and Loan Co. of Canada*, [1932] 1 K. B. 517, see note [18]. See, however, *Bradbury* v. *English Sewing Cotton Co.*, [1923] A. C. 744, p. 226, note [66]; and cf. the reasons given by Lord SHAW in that case, and in the *Liverpool and London Case*. The nature of this option was considered in *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432 (see p. 71), where it was held not to apply as between Schedules, but only as between Cases: see *per* Lord DUNEDIN, at 446-7; *per* Lord ATKIN, at 466-7. As to profit made on realising investments, see p. 104. Special provisions dealing with the income of a foreign or colonial assurance company will be found in Case III r. 3: see p. 480.

[14] Act of 1918, s. 33, see p. 412.

trading account which has money—its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above charge on the profits. It must elect between the two. The reason is very obvious, because if the Crown were not allowed to do that, the Crown would lose the produce of an investment according to the extent whether that investment was held by a private individual or by a trading company."[15]

Where the tax on the interest has not been deducted at the source,[16] the interest may be added in computing the profits of the trade for assessment under Case I.[17] But if the tax has been so deducted, it is not right to include the net interest in the computation, even though the interest is upon bonds purchased cum-coupon and sold immediately afterwards ex-coupon.[18] The interest added may include interest on investments abroad which is not remitted to the United Kingdom, whether the investments are made to satisfy the laws of the country where business is carried on, or are made voluntarily out of accumulated profits or to provide capital for the purposes of the trade.[19] It may also include interest on advances made on the security of real property situate abroad, where the business of making such advances is inextricable from that of making advances on the security of produce imported to this country.[20]

Profession, Employment or Vocation—The income tax is leviable under Case II of Schedule D[21] in respect of "any profession, employment or vocation"; but Schedule D no longer applies to the profits of any "office or employment," in which one individual is employed by another individual, firm or body of persons;[22] these are now chargeable under

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[15] *Revell* v. *Edinburgh Life, etc.* (1900), 5 Tax C., *per* Lord DUNEDIN, L.P., at 226; cited by COZENS-HARDY, M.R., [1912] 2 K. B at 51. [16] See p. 185.

[17] *Scottish Union, etc.* v. *Smiles*; *Northern Assurance, etc.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551; *Clerical, Medical and General, etc.* v. *Carter* (1889), 22 Q. B. D. 444; *Norwich Union, etc.* v. *Magee*; *Revell* v. *Edinburgh Life, etc.*; *Liverpool and London and Globe, etc.* v. *Bennett*, *supra*. In any case where the trader is still exempt in respect of the interest, the exclusion of such interest does not carry with it any reduction of the trade expenses allowed: *Hughes* v. *Bank of New Zealand:* see p. 62, note [2].

[18] *Thompson* v. *Trust and Loan Co. of Canada*, [1932] 1 K. B. 517.

[19] *Norwich Union, etc.* v. *Magee*, *supra*; *Liverpool and London and Globe, etc.* v. *Bennett*, *supra*. Interest on investments abroad which was not remitted to this country was held not to be taxable in *Gresham Life, etc.* v. *Bishop*, [1902] A C. 287, and other cases cited therewith (see p. 241); but in those cases the assessment had been made under Case IV. If it had been made under Case I, apparently the result would have been as indicated in the text.

[20] *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, see p. 77. If it had not been inextricable, it seems probable that the interest on the first class of advances would have come within the purview of Case IV; but upon the facts the Court held that it did not. Contrast *Butler* v. *Mortgage Co. of Egypt, Ltd.*, p. 94, note [13]. [21] See p 472.

[22] With the exception of "employments" outside the United Kingdom which are "possessions" of persons residing in this country, and are not offices or employments originally chargeable under Sched. E: see observations on Case V and *Foulsham* v. *Pickles*, pp. 229, 240.

Schedule E[23] like those of public offices or employments of profit, *i.e.*, offices held under the Crown or under companies, etc.[24]

"Employment" in Case II, then, is synonymous with vocation; it does not include employment "in a post"; but it includes employment under a contract which does not confer a post, such as an actress's professional engagement;[25] it did not, however, include the employment of a producer of cinema films.[26] "A man may employ himself so as to earn profits in many ways . . . the word 'vocation' is analogous to 'calling,' a word of wide signification, meaning the way in which a man passes his life"; accordingly, the calling of a professional bookmaker is a vocation within Case II.[27] A person engaged in another profession who writes plays in his spare time may be carrying on the vocation of a dramatist.[28] Earnings from newspapers for advice on betting are within Case II;[29] but a man who supports himself by private betting with bookmakers does not exercise a trade or vocation, and is not taxable;[30] and a golf professional's winnings on bets on matches in which he plays are not profits of an employment or vocation.[31] Money paid to a land agent as commission incident to services performed in relation to the carrying out of a contract of sale is part of the profits arising out of the vocation of the land agent, as such.[32] But a trustee under a settlement, which provides that he shall be paid an annual remuneration out of the trust income, is not exercising an employment or vocation, and is not directly assessable.[33]

As the profits of trades are taxable under Case I and the amount of profits and gains is ascertained in the same way under either case, the distinction between trades on the one hand and "professions, employments and vocations" (in the sense in which those words are now used in Schedule D) on the other, is not of much practical importance. A company indeed cannot exercise a profession;[34] but apart from any topics dealing with companies, whatever is said in connection with Schedule D as to trades is, in general, true also as to professions.

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[23] Finance Act, 1922, s. 18 (1), see p. 505, and Chap. 11. The rule applicable to Case II must now be read in a much restricted sense.

[24] See Sched. E and r. 6 thereof, p. 454.

[25] *Davies* v. *Braithwaite*, [1931] 2 K. B. 628; an engagement to act in America may be part of the profession carried on in the U. K.: *Same* v. *Same* (1933), 19 R. & I. T. 54.

[26] *Asher* v. *London Film Productions, Ltd.*, [1944] 1 K. B. 133.

[27] *Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276, *per* DENMAN, J., at 278.

[28] *Bullam* v. *Griffith* (1941), 23 Tax C. 757, see p. 109.

[29] *Graham* v. *Arnott*, (1941), 24 Tax C. 157. [30] *Graham* v. *Green*, [1925] 2 K. B. 37.

[31] *Down* v. *Compston*, [1937] W. N. 172; 21 Tax C. 60.

[32] *Humphrey* v. *Peares*, [1913] 2 Ir. R. 462; 6 Tax C. 201. On the question whether more than one vocation is being carried on, see *Elliott* v. *Guastavino* (1924), 8 Tax C. 632.

[33] *Bazendale* v. *Murphy*, [1924] 2 K. B. 494; the annual payment was rightly made under deduction of tax: see p. 189. The contrary is the case where a payment is made to a solicitor trustee for professional work: *Jones* v. *Wright* (1927), 44 T. L. R. 128. [34] Cf. *Wm. Esplen, Ltd.* v. *I. R.*, [1919] 2 K. B. 731.

CHAPTER 6

PROFITS OF TRADES AND PROFESSIONS : SCHEDULE D, CASES I AND II

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Basis of Assessment : Profits and Gains—Tax under Schedule D as regards trades, professions, employments and vocations is charged "in respect of the annual profits or gains arising or accruing from" them;[1] as regards trades, it is computed "on the full amount of the balance of the profits or gains";[2] as regards professions, etc., "on the full amount of the balance of the profits, gains and emoluments."[3] In computing "the amount of the profits or gains to be charged" certain deductions are prohibited;[4] and subsidiary provisions refer to "profits or gains"[5] or to "profits."[6]

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[1] Sched. D, 1 (a), see p. 472. The word "annual" in this phrase does not mean that there must be profits made in more years than one: *Martin* v. *Lowry*, [1927] A. C. 312; indeed it seems to have very little effect, if any· *Townsend* v. *Grundy* (1933), 18 Tax C. 140.

[2] Rule applicable to Case I, see p. 471.

[3] Rule applicable to Case II.

[4] S. 209, see p. 447, and rules applicable to Cases I and II, rr. 1 (1) and (3), see p. 473. In the corresponding third rule contained in the Act of 1842, the phrase "profits or gains" was "loosely and inaccurately" used to mean gross receipts (*per* Lord HERSCHELL, in *Gresham Life, etc.* v. *Styles*, [1892] A. C. 323-4), it is not so used in the Acts now current.

[5] *E.g.*, Cases I and II, rr. 1 (2), 4—8; General Rules, 18—21, see pp. 473, 490.

[6] *E.g.*, Cases I and II, rr. 15, 16, 17; see p. 478

There is no distinction between "profits" and "gains,"[7] and in fact all these varying and somewhat pompous phrases mean the same thing—the net profits of the trade or profession computed by reasonable business methods subject to any specific directions contained in the Income Tax Acts.

The truth of the above proposition is not always appreciated; the following authoritative statements are therefore cited to show the broad principle upon which assessments in respect of trades and professions are to be made:—

"What is the meaning of 'profits or gains' . . . ? Unless the context requires a different meaning or the words appear to be used throughout the Act in another sense, I think they must be construed according to their ordinary signification. When we speak of the profits or gains of a trader, we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise."[8]

"The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. . . . Unless and until you have ascertained that there is such a balance, nothing exists to which the name 'profits' can properly be applied."[9]

"It is plain that the question of what is or is not profit or gain must primarily be one of fact, and of fact to be ascertained by the tests applied in ordinary business. Questions of law can only arise when . . . some express statutory direction applies and excludes ordinary commercial practice, or where, by reason of its being impracticable to ascertain the facts sufficiently, some presumption has to be invoked to fill the gap."[10]

"The expression 'balance of profits and gains' implies, as has often been pointed out, something in the nature of a credit and debit account, in which the receipts appear on the one side and the costs and expenditure necessary for earning these receipts appear on the other side. . . . Where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, it ought to be allowed . . . provided there is no prohibition against such an allowance . . .."[11]

"Trade incomings are not profits of the trade till trade outgoings have been paid or allowed for and deducted.

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[7] *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891 (see p. 75), *per* Lord SELBORNE, at 905; *Port of London Authority* v. *I. R.*, [1920] 2 K. B. 612.

[8] *Gresham Life, etc.* v. *Styles*, [1892] A. C., *per* Lord HERSCHELL, at 322.

[9] *Russell* v. *Town and County Bank*, 13 App. Cas., *per* Lord HERSCHELL, at 424; see p. 126.

[10] *Sun Insurance Office* v. *Clark*, [1912] A. C. 443, *per* Lord HALDANE, at 455.

[11] *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. *per* Lord PARKER, at 458 see p. 117. See *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725, p. 100;

"Rule 1 of the First Case of Schedule D does not, however, leave matters to the taking of a commercial account simpliciter; it provides that the duty shall be 'assessed, charged and paid without other deduction than is hereinafter allowed';[12] and this must mean, though it is not strictly expressed, without other deductions in the computation of the sum on which the duty is charged. Section 159 states it thus. . . .[13] Virtually both provisions mean that in computing the sum which when ascertained is to be charged with duty, only the enumerated deductions shall be lawfully allowable.

"The paradox of it is that there are no allowable deductions expressly enumerated at all, and there is in words no deduction allowed at all unless indirectly. . . .[14]

"The effect of this structure, I think, is this, that the direction to compute the full amount of the balance of the profits must be read as subject to certain allowances and to certain prohibitions of deductions, but that a deduction, if there be such, which is neither within the terms of the prohibition nor such that the expressed allowance must be taken as the exclusive definition of its area, is to be made or not to be made according as it is or is not on the facts of the case a proper debit item to be charged against incomings of the trade when computing the balance of profits of it "[15]

"Instead of saying that the duty shall be imposed on . . . the amount of the profits . . . it is imposed 'on the balance' of such profits. I have not been able to discover any difference in the meaning of the two phrases."[16]

"The general words 'profits and gains' or 'balance of profits and gains' are equally applicable whatever the commercial concern carried on may be."[17]

"[Case I] plainly contemplates the preparation of a balance sheet in which proper trading disbursements and liabilities are to be set against trade assets, so that the surplus of the latter, if any, will represent the assessable profits or gains of the concern."[18]

British Insulated, etc. Cables, Ltd. v. *Atherton*, [1926] A. C. 205 (p. 113), and *Anglo-Persian Oil Co.* v. *Dale*, [1932] 1 K. B. 124 (p. 144), *per* ROMER, L.J.; see p. 114. See also *Hoare & Co., Ltd.* v. *Collyer*, [1932] A. C. 407, p. 117.

[12] Rule 1 (1) of Sched. D, Cases I and II in the Act of 1918 (see p. 473), is slightly different in wording, but this does not affect Lord SUMNER'S argument.

[13] See now s. 209 (1) (a), p. 447.

[14] There are now positive directions with regard to deductions for depreciation: see Cases I and II, rr. 6 and 7; Act of 1937, s. 15; and a few other matters. But in general the structure is still as described by Lord SUMNER; rule 3 of Cases I and II (see p. 473) brackets together a series of prohibitions, which are tempered by exceptions, so that any positive direction has to be arrived at by cancelling out a double negative.

[15] *Per* Lord SUMNER, [1915] A. C. 467, 468.

[16] *Per* Lord BLACKBURN, in *Coltness Iron Co.* v. *Black*, 6 App. Cas. 333-4; see p. 110.

[17] *Gresham Life, etc.* v. *Styles*, [1892] A. C. 309, *per* Lord HALSBURY, L.C., at 315.

[18] *Gresham Life, etc.* v. *Styles*, [1892] A. C. 309, 317, *per* Lord WATSON.

It must, however, be borne in mind that expenses in order to be deductible in ascertaining profits must have been incurred for the purpose of earning the gross receipts; they must be wholly and exclusively laid out or expended for the purposes of the trade or profession.[19] "It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade."[20] There is no deduction therefore for such expenses or losses as damages for negligence, penalties for offences,[21] costs of defending proceedings for offences, or medical expenses; nor for fire insurance premiums, or depreciation of machinery, on premises owned by one trading company, but used solely by another.[22]

Speaking generally, the profits of a trade are usually computed for purposes of Schedule D on an "earnings" basis, and those of a profession often on a "cash" basis: on the former basis, amounts receivable under contracts entered into in the year are credited,[23] and allowance is made for bad debts;[24] on the latter, only cash payments received in the year are credited.[25] "As a general rule, stock acquired by a trader must be brought in [as a debit item] at the price which he paid for it, in order to calculate the profit which he makes by its sale."[26]

On the other hand, "a sum of money expended, not of necessity and with a view to the immediate benefit of the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade."[27] It is upon this principle that revenue expenditure for such objects as the provision of retiring allowances has been held to be properly debited.[28]

War risk payments of certain kinds are not deductible.[29]

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[19] Sched. D, Cases I and II, r. 3 (a), see p. 473. Sums credited as remuneration to directors, etc. are not necessarily allowable: *Copeman* v. *Wm. Flood, Ltd.*, [1941] 1 K. B. 202; cf. *Johnson* v. *I. R.*, [1919] 2 K. B. 717 (excess profits duty); *Aspro, Ltd.* v. *Commrs. of Taxes*, [1932] A. C. 683. For special provisions as to registered societies and other "mutual" companies, see p. 154.

[20] *Strong* v. *Woodifield*, [1906] A. C. 448 [see p. 118], *per* Lord DAVEY, at 453

[21] *Strong* v. *Woodifield, supra*; *I. R.* v. *von Glehn*, *I. R.* v. *Warnes*, see p. 103. A subscription to a hospital was disallowed in *Bourne and Hollingsworth, Ltd.* v. *Ogden* (1929), 45 T. L. R. 222; *Spofforth* v. *Golder*, [1945] 1 All E. R. 363, *Norman* v. *Golder, ibid.* 352.

[22] *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725.

[23] See, *e.g.*, *Lock* v. *Jones* (1941), 23 Tax C. 749.

[24] See *Absalom* v. *Talbot*, [1944] A. C. 204, *per* Lord PORTER. See "Bad Debts," p. 102.

[25] The effect of a change from the "earnings" to the "cash" basis in computing the profits of a profession was considered in *I. R.* v. *Morrison*, 1932 S. C. 638; 17 Tax C. 325.

[26] *Osborne* v. *Steel Barrel Co., Ltd.*, [1942] 1 All E. R. 638, *per* Lord GREENE, M.R., see p. 116. Greyhounds for a racing track are not stock-in-trade: *Abbott* v. *Albion Greyhounds, Ltd.*, [1945] 1 All E. R. 308. As to dealing in land, see *Hudson* v. *Wrightson* (1935), 26 Tax C. 55.

[27] *Per* Lord CAVE, L.C., in *British Insulated, etc. Cables, Ltd.* v. *Atherton*, [1926] A. C. 212; see p. 112.

[28] See p. 124; and see *Mitchell* v. *B. W. Noble, Ltd.*, p. 114, note [68].

[29] See p. 116.

Debits and Credits : In what Year ?—Complicated questions sometimes arise as to the particular year in which an item may properly be debited or credited. Where a debit item has been entered in one year and the amount is in a later year repaid to the trader, because the liability is found not to be legally enforceable,[30] or a smaller sum is accepted in respect of a disputable liability,[31] or where goods have been requisitioned by the Government in one year and paid for in a later year,[32] or compensation for detention of ships by the Government has been paid in a later year,[33] the payment or repayment should be credited in the accounts of the earlier year. Where goods have been delivered pending negotiation as to prices, and the prices are afterwards increased retrospectively, the increased prices are to be credited in the years in which the goods were delivered, though the additional amount due to the vendors is subsequently paid in instalments.[34] On the other hand, where a debt about which there is no dispute appears in the accounts of one year, and is forgiven in a later year, the accounts of the earlier year are not to be re-opened, nor is the amount remitted to be entered as a receipt in the later year.[35] Wages shown as paid in earlier years but in fact misappropriated, and subsequently made good by the auditors, are to be credited in the year in which they are recouped.[36]

Where a sum is paid for the cancellation of a contract, the payment should be credited in the year in which the agreement for the cancellation makes it payable and should not be spread over the years in which profits would have accrued under the original contract if it had been carried out.[37] So, also, rents for warehousing whiskey were held not to be properly credited until the removal of the goods made it possible to ascertain and demand the net amounts payable in view of loss by leakage, etc.;[38] but if the rents become payable as soon as the whiskey is stored, they are to be credited as from that time.[39] Payments depending on the result of a series of sales extending over years and not ascertainable until the conclusion of the sales, were not

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[30] *English Dairies, Ltd.* v. *Phillips* (1927), 11 Tax C. 597 (income tax); *Ford* v. *I. R.* (1926), 12 Tax C. 997 (excess profits duty).

[31] *Bernhard* v. *Gahan* (1928), 13 Tax C. 723. See also *Wright Sutcliffe, Ltd.* v. *I. R.* (1929), 8 A. T. C. 168 (excess profits duty).

[32] *I. R.* v. *Newcastle Breweries, Ltd.* (1927), 12 Tax C. 927 (excess profits duty).

[33] *Ensign Shipping Co., Ltd.* v. *I. R.* (1928), 139 L. T. 111, 14 Tax C. 1169 (corporation profits tax). See also *New Conveyor, Ltd.* v. *Dodd* (1945), 24 A. T. C. 216.

[34] *Frodingham Ironstone Mines, Ltd.* v. *Stewart* (1932), 16 Tax C. 728.

[35] *Jackson* v. *British Mexican Petroleum Co., Ltd.* (1932), 16 Tax C. 570 (H.L.); p. 102.

[36] *Gray* v. *Lord Penrhyn* (1937), 21 Tax C. 252.

[37] *Short Bros., Ltd.* v. *I. R.* (1927), 136 L. T. 689; *Robinson* v. *I. R.* (1929), 8 A. T. C 121 (excess profits duty). As to the crediting of advances which may become repayable, see *Smart* v. *Lincolnshire Sugar Co., Ltd* (p. 108), *per* GREENE, L.J. (1935), 154 L. T. 167, 175.

[38] *Dailuaine-Talisker Distilleries, Ltd.* v. *I. R.* (1930), 9 A. T. C. 339; see, further, *I. R.* v. *Oban Distillery Co., Ltd.*, 1933 S. C. 44, p. 273.

[39] *I. R.* v. *A. Bell & Sons, Ltd.*, 1939 S. C. 35; 22 Tax C. 315.

allowed to be spread over the years through which the sales extended.[40] Balances of purchase-money remaining unclaimed in the hands of a firm of auctioneers do not, on being after a lapse of years distributed among the partners, become trading receipts.[41]

A lump sum payment to the author in respect of the copyright of a literary, dramatic, musical or artistic work which has taken more than twelve months in the making may (on application) be spread over two or three years of assessment, as the case may be.[42]

Bad and Doubtful Debts—A rule of Schedule D prohibits any deduction for debts "except bad debts proved to be such . . . and doubtful debts to the extent that they are estimated to be bad.[43] It follows that if in one year the selling-price of goods or other assets "has been included in the vendor's trade profits and if in a later year it is ascertained that part of the price which still remains to be paid is of doubtful value or is a bad debt, the allowance . . . is authorised and required by statute, notwithstanding that the year of sale has passed by. It will be adjusted by an allowance in the later year in which its unsoundness is proved."[44] An assessment made for that later year subject to such an allowance cannot subsequently be increased;[45] but if in a yet later year the debt proves to be of a greater or less value than had been assumed, the increase may have to be added or the decrease deducted in calculating the profits for the year last mentioned.[46] A debt owed by a limited company may be a bad debt, though the company is still trading,[47] and although it is transferred to an individual who proves unable to pay it.[47a]

Destination of Profit Immaterial—If there are profits their destination is immaterial. "The gains of a trade are that which is gained by the trading, for whatever purposes it is used, whether it is gained for the benefit of the community, or for the benefit of individuals. Whether the benefit is to be obtained by dividends, or whether it is to be obtained by lightening and diminishing public burdens, it is the same."[48]

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[40] *Rowntree Drew and Clydesdale, Ltd.* v. *I. R.* (1931), 16 Tax C. 595 (s. p. d.).
[41] *Morley* v. *Tattersall*, [1938] W. N. 239; 22 Tax C. 51.
[42] Act of 1944, s. 24, see p. 685; as to the time and method of claiming, see p. 392.
[43] Cases I and II, r. 3 (i), p. 473
[44] *Absalom* v. *Talbot*, see p 100; [1944] 1 A. C. 204., *per* Viscount Simon, L.C., p. 213; Lords Simon and Porter formed a minority as regards the decision of the H. L.; but Lord Atkin agreed in the above view, and in holding that *Gleaner, Ltd.* v. *Assessment Committee*, [1922] 2 A. C. 169, which confined the allowance to the year of the sale, should not be followed; *Bristow* v. *Dickinson, Ltd.* (1945), 62 T. L. R. 37.
[45] *Anderton and Halstead* v. *Birrell*, [1932] 1 K. B. 271, see p. 373.
[46] [1944] 1 All E. R. 652, *per* Lord Porter. As to *Reid's Brewery* v. *Male*, see p. 116.
[47] Cf. *Dinshaw* v. *Bombay Commr.* (1934), 50 T. L. R. 427.
[47a] *Caldero, Ltd.* v. *I. R.*, 1944 S. C. 423.
[48] *Mersey Docks* v. *Lucas*, see p. 75: 8 App. Cas., *per* Lord Selborne, L.C., at 903, 905; *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101: see p. 112, below.

The effect of this principle upon the taxation of charitable institutions and public undertakings has already been seen.[49] It applies equally to private enterprises.[50] If a solicitor is one of two trustees, and one of the beneficial owners of the trust estate, he must include in his professional receipts the whole of any costs paid to him by the trustees.[51] If a company makes profits it is taxable upon them whether it distributes them as dividends or carries them to reserve; but in certain circumstances a reserve fund, so far as it is necessary for the current business, may form an expense of the trade, and not part of the profits.[52] There are express directions that the profits of a body of persons (which includes a company) are to be computed before any dividend is distributed; and the company or other body is entitled to deduct the tax in paying the dividend.[53] Yearly interest, annual payments and patent royalties are not to be set aside in ascertaining profits, but the payer may deduct tax in paying them;[54] there is an exception in respect of registered societies.[55]

There are also specific prohibitions against the deduction, in computing profits, of any loss not connected with or arising out of the trade or profession;[56] in order to be deducted the loss must be in the nature of a commercial loss, and therefore damages for personal injuries due to the negligence of the traders' servants,[57] and penalties for breaches of the customs laws[58] are not to be deducted, nor is a loss by defalcation,[59] or by excessive drawings on the part of a director;[60] nor is there any deduction for the costs of tax appeals.[61] Such payments are not necessarily incurred, nor do they form a necessary risk, in earning the profits; this exclusion illustrates the general rule that it is immaterial for what purpose the profits are expended, even if the expenditure is compulsory.[62]

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[49] Chap. 5, pp. 73—76.

[50] *Last* v. *London Assurance Corpn.* (1885), 10 App. Cas. 438, *New York Life, etc.* v. *Styles* (1889), 14 App. Cas. 381, see p. 72. See also *Union Cold Storage Co., Ltd.* v. *Adamson*, p. 125.

[51] *Watson and Everitt* v. *Blunden* (1933), 18 Tax C. 402.

[52] Cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001; as to the life fund of a life insurance company, see *Last* v. *London Assurance Corpn.* (1884), 12 Q. B. D 389; but as to mutual concerns, see p. 72.

[53] General Rules, r. 20, see p. 490; "body of persons" is defined in s. 237, see p. 452. As to persons chargeable, see Chap. 12.

[54] General Rules 19, 21, see pp. 185, 196 *sqq.*, see also p. 203. Copyright royalties paid to a person whose usual place of abode is abroad are brought within r. 21 by s. 25 of the Act of 1927, see pp. 203—204.

[55] Act of 1933, s. 32, see pp. 72, 154.

[56] Sched. D, Cases I and II, r. 3 (e), see p. 441; s. 209 (2), see p. 415.

[57] *Strong & Co.* v. *Woodfield*, [1906] A. C. 448, see pp. 100 and 118.

[58] *I. R.* v. *Warnes*, [1919] 2 K. B. 444; *I. R.* v. *von Glehn*, [1920] 2 K. B. 553, see p. 100.

[59] *Curtis* v. *Oldfield, Ltd* (1925), 41 T. L. R. 373, cf. *Gray* v. *Lord Penrhyn*, p. 101.

[60] *Roebank Printing Co.* v. *I. R.*, 1928 S. C. 701; 13 Tax C. 864.

[61] *Allen* v. *Farquharson* (1932), 17 Tax C. 59.

[62] As to relief in respect of commercial loss, see pp. 151—154.

On the other hand, a sum paid by a company to a director (whose presence is detrimental to the company's business) in order to avoid the publicity of an action for wrongful dismissal may be a proper deduction in arriving at profits, as having been expended wholly and exclusively for the purposes of the trade.[63] But a payment made to the directors of a company, retiring because another company has acquired their shares, may be a mere distribution of profits, and therefore not deductible.[64] A loss through exchange fluctuations, incurred by a subsidiary company in paying moneys owed to a principal company abroad, may be deductible in the accounts of the subsidiary.[65] But the principal company cannot deduct a sum credited to its subsidiary in order to prevent the latter from showing a loss.[66] The fact that a payment is calculated at a percentage of "profits" need not prevent it from being deductible, as where such a sum is paid for technical advice and assistance.[67]

Additions to Capital not included in Taxable Profits : Sale of Investments—The Income Tax Acts charge income, not capital; and income is taxable "notwithstanding that on an adjustment of accounts part of the sums accruing as income ought to go to recoup capital."[68]

Controversy often arises as to whether the net proceeds of sales of investments in securities, landed property and so on are profits of a trade or accretions of capital. The test is, whether or not a trade is carried on in the buying and selling of the investments. Thus, a man who possesses a collection of pictures for his own enjoyment, and who sells one of them to meet his pecuniary necessities—or even because a tempting offer happens to be made to him—is not taxable for the proceeds of the sale;[69] but a picture dealer who has bought to sell again is liable on his net profits.

"Where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D. . . . But enhanced values obtained from realisation or conversion of securities may be so assessable, where what

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[63] *Mitchell* v. *B. W. Noble, Ltd.*, [1927] 1 K. B. 719, see p. 114: followed on somewhat similar facts, *G. Scammell, Ltd.* v. *Rowles* (1939), 22 Tax C. 479; cf. *Anglo-Persian Oil Co., Ltd.* v. *Dale*, [1932] 1 K. B. 124, and *Wilson* v. *Nicholson, Sons & Daniels, Ltd.*, [1943] 2 All E. R. 732. *Deverell, Ltd.* v. *Rees* (1943), 25 Tax C. 467, seems to conflict with these decisions.

[64] *Overy* v. *Ashford Dunn & Co., Ltd.* (1933), 49 T. L. R. 230; 17 Tax C. 497; so held on a somewhat similar transaction in *Bassett Enterprise, Ltd.* v. *Petty* (1938), 21 Tax C. 730.

[65] *Radio Pictures, Ltd.* v. *I. R.* (1936), 22 Tax C. 106.

[66] *Odhams Press, Ltd.* v. *Cook* (1940), 56 T. L. R. 704 (H. L.).

[67] *British Sugar Mfrs., Ltd.* v. *Harris*, [1938] 2 K. B. 220.

[68] *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424, *per* FARWELL, L.J., at 437. Cf. *Jones* v. *Leeming*, note [70]; *Hudson* v. *Wrightson* (1934), 26 Tax C. 55.

is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association . . . buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by realisation, the gain they make is liable to be assessed for income tax."[69]

"An accretion to capital does not become income merely because the original capital was invested in the hope and expectation that it would rise in value; if it does so rise, its realisation does not make it income."[70]

In practice the line is often difficult to draw. The buying and selling of investments is a necessity of insurance business; and where an insurance company in the course of its trade realises an investment at a larger price than was paid for it, the difference is to be reckoned among its profits;[71] conversely, any loss is to be deducted.[72] An investment company (so named) which had power to vary its investments was taxable on the profits made by realising securities, though these were not distributed as dividend but were credited to capital account, and although the capital account as a whole showed a loss in the year in question;[73] and a bank was taxable on the profits shown as a result of the conversion of National War Bonds held by it.[74] An appreciation in exchange resulting from a purchase of foreign currency made as a separate speculation is not necessarily a trade profit,[75] but if the currency has been bought for the necessary purposes of the trade, the appreciation may form such a profit.[76] And similarly an appreciation realised by a commission agent for the sale of imported goods,

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[69] *Californian Copper Syndicate* v. *Harris* (1904), 6 F. 894; 5 Tax C. 159, *per* Lord Justice-Clerk MACDONALD, at 165, approved in *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001, 1010 and *Ducker* v. *Rees Roturbo Syndicate* (see p. 106), [1928] A. C. 140. These principles may apply though the company was formed for a wholly different purpose: see, *e.g.*, *Cayzer, Ltd.* v. *I. R.*, p 70.

[70] *Jones* v. *Leeming*, [1930] A. C. 415, 420, *per* Lord BUCKMASTER; see p. 234.

[71] *Scottish Union, etc.* v. *Smiles*; *Northern Assurance Co.* v. *Russell* (1889), 16 R. 461, 2 Tax C. 551, see pp. 95 and 121. In *I. R.* v. *Scottish Automobile, etc., Insurance Co., Ltd.*, 1932 S. C. 87, a realisation of this kind was found by the Commissioners not to have taken place in the course of the company's trade; and their decision was upheld.

[72] *Royal Insurance Co., Ltd* v. *Stephen* (1928), 44 T. L. R. 630; see p. 123. See *Thompson* v. *Trust and Loan Co. of Canada*, [1932] 1 K. B. 517, p. 95.

[73] *Scottish Investment Trust Co.* v. *Forbes* (1893), 21 R. 262, 3 Tax C. 231.

[74] *Westminster Bank* v. *Osler*, [1933] A. C. 139. Special provisions applicable in connection with the conversion of Government securities, and with the since converted War Loan Stock, will be found in the No. 2 Act of 1931, *ss.* 10 and 16: see p. 564.

[75] *McKinlay* v. *Jenkins, Ltd.* (1926), 10 Tax C. 372.

[76] *Imperial Tobacco Co.* v. *Kelly*, [1943] 2 All E. R. 119 (C. A.). It is not easy to find the distinction between these two cases; the latter decision seems the more likely to be followed.

on the repayment of advances made to his principal, may be a profit of the agent's trade.[77] A company formed to acquire the assets of a bank in order that the liquidation of the bank may be closed, is taxable if it makes a profit on the realisation of those assets;[78] but the sale of a partnership business to a limited company formed by the partners is not a transaction which gives rise to a taxable profit;[79] nor is the sale to a company (formed for the purpose) of two options to purchase rubber estates, where the vendors are neither company promoters nor dealers in land, but the transaction is an isolated one.[80] A mining syndicate formed in order to acquire copper-bearing land, to develop it to some extent and then to sell it (but not to work it), in carrying out those transactions is carrying on a trade and is taxable on the profit made.[81] So a company, one part of whose usual business was to act as selling agent for colliery owners and to purchase wagons for them,[82] was held to be taxable on the profit of an occasional sale of wagons purchased on its own account. A company which erected buildings as contractors, and also bought, erected and sold buildings (with their sites), on its own account was held to be carrying on one trade only.[83] But where a colliery company had constructed works for the supply of surplus water to a local authority, and was reimbursed for the cost by annual payments spread over thirty years, the repayments were held to be capital receipts, and not profits of the company's trade.[84] A company formed in order (among other objects) to buy patents and to make a profit by selling them is liable, if it sells them, to tax on the excess of the selling price over the purchase price.[85] A lump sum awarded for the use of a patent by the Crown may be subject to tax,[86] as may the amount received for the sale

[77] *Landes* v. *Simpson* (1934), 19 Tax C. 62.

[78] *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578, 3 Tax C. 542, see p. 70, note [17]; cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, p. 104. Such a profit can be said to be earned at the time when it is distributed to the shareholders: *ibid.*, [1914] A. C. 1011. Contrast *Wilson Box, Ltd.* v. *Brice*, *Shingler* v. *Williams*; *I. R.* v. *Nelson*, pp. 69, 70.

[79] *Doughty* v. *Commissioner of Taxes*, [1927] A. C. 327, see p. 110.

[80] *Jones* v. *Leeming*, [1930] A. C. 415, see p. 234.

[81] *Californian, etc.* v. *Harris*, see note [69]; cf. *I. R.* v. *Korean Syndicate*, [1921] 3 K. B. 258 (e p.d.); but as to the effect of decisions relating to other taxes, see *Morning Post, Ltd* v. *George*, 23 Tax C. 523.

[82] *T. Beynon, Ltd.* v. *Ogg* (1918), 7 Tax C. 125; cf. *Gloucester Carriage and Wagon Co., Ltd.* v. *I. R.*, [1925] A. C. 469.

[83] *Spiers & Son, Ltd.* v. *Ogden* (1932), 17 Tax C. 117.

[84] *Boyce* v. *Whitwick Colliery, Ltd.* (1934), 18 Tax C. 656; as to cost of constructing railway sidings, see *Legge* v. *Fletton, Ltd.*, and contrast *Westcombe* v. *Hadnock Quarries, Ltd.*, p. 114.

[85] *Ducker* v. *Rees Roturbo Syndicate*, [1928] A. C. 132. In *Collins* v. *Firth-Brearley Stainless Steel, etc., Ltd.* (1925), 9 Tax C. 520, the company was found not to be formed for such an object, and the sale of its patent rights was held to be the transmutation of a capital asset.

[86] *Constantinesco* v. *The King* (1927), 43 T. L. R. 727; *Mills* v. *Jones* (1929), 46 T. L. R. 118.

of a right to use patent machines and processes in the purchaser's mills,[87] but a lump sum paid for refraining from the exercise of such a right in a certain territory is not a taxable receipt.[88] On the other hand, payments at a fixed rate on each article sold by a trading company, which formed a part of the purchase price of the shares in that company and which might continue in perpetuity unless the purchaser should commute them, were income receipts of the vendors.[89]

Again, where the original intention of forming a syndicate was not to buy the land (in that case a rubber estate) in order to sell again, but to work the land; but afterwards, on additional land being acquired, the capital was found to be too small to work the whole, and the land was then sold, the syndicate was held not to be taxable on the profits made by the sale.[90] In both this and the contrasted *Californian Case*, the sale of the lands was one of the objects specified in the memorandum of association.

Where, for the purpose of developing and realising lands held by trustees and other persons, it was found convenient to form a company rather than that they should act individually, or as a body of trustees, the company's receipts were, in one case, held to be income, or the profits of a trade;[91] and in another to be the proceeds of realising investments.[92] A company formed to build blocks of tenements and receive rents for them, which found it advantageous to sell some of them, was held to be realising investments.[93] Receipts from sales of slag heaps by a company which had given up iron and steel operations but were trading as colliery proprietors were not trading receipts.[94]

A chartered company "can do anything it is not prohibited from doing," and the specific objects for which it is formed cannot so readily be ascertained as in the case of a limited company; but a chartered company which has received lands in exchange for the surrender of its territorial rights is not taxable on the profits of the sale of such lands although they may be applied in payment of dividends.[95] It is otherwise if

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[87] *Brandwood* v. *Banker* (1928), 7 A. T. C. 200.

[88] *Margerison* v. *Tyresoles, Ltd.* (1942), 25 Tax C. 59.

[89] *I. R.* v. *36—49 Holdings, Ltd.* (1943), 25 Tax C. 173 (C. A.).

[90] *Tebrau (Johore) Rubber Syndicate, Ltd.* v. *Farmer* (1910), 5 Tax C. 658.

[91] *Balgownie Land Trust, Ltd.* v. *I. R.*, 1929 S. C. 740; 14 Tax C. 684; in this case the company had sold another piece of property (which it had bought), as well as part of that which had belonged to the trust. *Hesketh Estates Ltd.* v. *Craddock* (1942), 25 Tax C. 1, was a somewhat similar case, with a similar result.

[92] *Rand* v. *Alberni Land Co., Ltd.* (1920), 7 Tax C. 629.

[93] *I. R.* v. *Hyndland Investment Co., Ltd.* (1929), 14 Tax C. 694.

[94] *Beams* v. *Weardale Steel, Coal and Coke Co., Ltd.* (1937), 21 Tax C. 204.

[95] *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 425, see p. 104; see also *Hudson's Bay Co.* v. *Thew*, [1919] 2 K. B. 632, p. 225, note [87].

a chartered company sells lands with a view to profit, as part of a general scheme for the development of its territory.[96]

The British Government expropriated a railway in the territory of the former South African Republic, and paid to the company arrears of interest guaranteed by the Republic; the amount paid was held to be gross receipts of the company's trade, and not to form part of the purchase price of its assets.[97] But where a dock company, requiring capital for an enlargement of its dock, obtained grants from the Unemployment Grants Committee, the grants were held to be received not in respect of trade, but in order to advance a capital expenditure.[98] On the other hand, subsidies and advances made to a company under the British Sugar Industry (Assistance) Acts, 1925 and 1931, were held to be trade receipts of the company.[99] A ploughing grant made under the Agricultural Development Act, 1939, is an income receipt.[1]

A lump sum paid voluntarily by a company in liquidation to a firm of ship managers as compensation for loss of their employment as managers to the company is not a profit of trade.[2] Again, a sum received by one company from another as compensation for the earlier termination of pooling agreements is not profit, but a capital receipt.[3] But a sum received on the cancellation of a contract which gave the recipients the sole right of selling certain goods in a particular district was held to be a trading receipt, as representing profits which might have been made under the contract.[4] The same was held as to a payment on termination of an agency agreement;[5] on the cancellation of a contract to pay commission on orders secured in consequence of an introduction by the payee (a trading company) to a particular customer;[6] on the withdrawal of a number of plots from a building agreement;[7] and on the surrender of a licence to use a racing track.[8] Compensation received from a railway company for leaving minerals unworked is a capital receipt.[9] But compensation paid for abstaining from the manufacture of a certain article may be an income receipt

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[96] *Thew* v. *South-West Africa Co.* (1924), 131 L. T. 248.
[97] *Pretoria-Pietersburg Ry. Co.* v. *Elwood* (1908), 6 Tax C. 508, see p. 183.
[98] *Seaham Harbour Dock Co.* v *Crook* (1930), 48 T. L. R. 91, where the case last cited was distinguished.
[99] *Lincolnshire Sugar Co., Ltd.* v. *Smart*, [1937] A. C. 697.
[1] *Higgs* v. *Wrightson* (1944), 60 T. L. R. 296.
[2] *Chibbett* v. *Robinson* (1924), 9 Tax C. 48; cf. *Cowan* v. *Seymour*, etc., p. 244.
[3] *Van den Berghs, Ltd.* v. *Clark*, [1935] A. C. 431.
[4] *Bush Beach and Gent, Ltd.* v. *Road*, [1939] 2 K. B. 534.
[5] *Kelsall, Parsons* v. *I. R.*, 1938 S. C. 238; 21 Tax C. 608; but not where the payment fell due on liquidation: *Barr Crombie* v. *I. R.*, 1945 S. L. T. 234.
[6] *Shove* v. *Dura Mfg. Co., Ltd.* (1941), 23 Tax C. 779.
[7] *Shadbolt* v. *Salmon Estate, Ltd.* (1943), 25 Tax C. 52.
[8] *Greyhound Racing Assn. (Liverpool), Ltd.* v. *Cooper* (1936), 20 Tax C. 373.
[9] *Glenboig Union Fireclay Co., Ltd.* v. *I. R.*, 1922 S. C. (H. L.) 112; 12 Tax C. 427 (e.p.d.). Contrast *Johnson* v. *Fry, Ltd.*, p. 124.

(or more correctly, may reduce a debit item) if paid in connection with an agreement by the payer to supply raw materials.[10]

Money received from an insurance company in respect of the destruction of stock-in-trade by fire is a trading profit; even though that receipt exceeds the value appearing in the trader's books.[11] The same principle applies where the insurance is for loss of profits due to fire;[12] or for compensation for the death or disablement of an employee.[13] Damages paid by contractors for delay in repairing a vessel intended to be used by a shipping company in its trade, are trading receipts of the company;[14] as are damages awarded to a play-producing company for breach of contract granting the exclusive licence to perform a play.[15]

A sum received as an advance of royalties on gramophone records was not a loan, but a trading receipt;[16] so is a sum paid in commutation of literary royalties.[17] A sum received for the sale outright of the film rights in a play may be a trading receipt of the dramatist's vocation.[18] Sums received for the privilege of supplying goods to a certain customer of the recipient over a period of years, and calculated and paid at so much per ton, are a trading receipt.[19]

Bonus Shares : Investment Companies—The question whether a particular gain is capital or income arises in connection with distributions of bonus shares. The decisions on this matter have mainly been concerned with the "total income" of an individual recipient, and are considered in Chapter 13; and, briefly, the principle laid down is that where by the act of the distributing company the distribution is made in the form of capital of that company, and there is no effective option to the shareholder to take cash, the shares or stocks received by him form an accretion to his capital.[20] But if the distribution of shares constitutes a release of assets as income, that principle does not apply; and where the shares distributed are not shares in the distributing company, but shares in another company held by the distributing company as part of its investments, the shares so distributed are not an accretion of capital, but form

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[10] *Thompson* v. *Magnesium Electron, Ltd*, [1944] 1 All E. R. 126 (C. A.).
[11] *J. Gliksten, Ltd.* v. *Green*, [1929] A. C. 381; see also *Rowneson, Drew and Clydesdale, Ltd.* v. *I. R.* (1931), 16 Tax C. 595, p. 102. As to valuation of stock-in-trade, cf. *Bombay Commr.* v. *Ahmedabad New Cotton Mills Co., Ltd.* (1929), 46 T. L. R. 68.
[12] *R.* v. *B. C. Fur, etc. Ltd.*, [1932] A. C. 441.
[13] *Murphy* v *Gray, Ltd*, [1940] 2 K. B. 175, *I. R* v *Williams Exors*, [1943] 1 All E. R. 318; affd. in H. L., [1944] 1 All E. R. 381.
[14] *Burmah Steamship Co., Ltd.* v. *I. R.*, 1931 S. C. 156; 16 Tax C. 67.
[15] *Vaughan* v. *Parnell and Zeitlin, Ltd.* (1940), 23 Tax C. 505.
[16] *Taylor* v. *Dawson* (1938), 22 Tax C. 189.
[17] *Glasson* v. *Rougier*, [1944] 1 All E. R. 535, but see Act of 1944, s. 24, at p. 102.
[18] *Billam* v. *Griffith* (1941), 23 Tax C. 757, see p. 96.
[19] *United Steel Companies, Ltd.* v. *Cullington (No. 2)* (1939), 23 Tax C. 71.
[20] *I. R.* v. *Blott*, [1921] 2 A. C. 171, and the cases cited therewith, p. 303.

a dividend paid in money's worth, and represent taxable income.[21] In that case the recipient of the shares distributed was an investment company and the proceeds of their sale formed part of the company's trade receipts.

Again, the market value of debentures received in satisfaction of unpaid interest on mortgage bonds may form part of such trade receipts.[22] So also may the market value of "funding bonds" received in respect of a liability to pay interest.[23]

Capital and Current Expenditure[24]. As accretions of capital are not to be included in gross receipts, so expenditure for capital purposes must not be deducted from those receipts in order to ascertain net profits.[25] Although expenditure may have been incurred wholly and exclusively for the purposes of the trade, it is yet not deductible when it is "made, not only once for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, . . . there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable, not to revenue, but to capital.[26] On the other hand, money borrowed in a "fluctuating temporary manner" for the purpose of more effectually carrying on the business operations is not "capital" in the sense in which the word is used in the Companies Acts: the word bears no different meaning in the Income Tax Acts when applied to the proceedings of companies,[27] nor indeed, it might be added, to those of individuals or partnerships.[28] Mere bookkeeping is not conclusive.[29] Specific provisions are made for allowances in respect

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[21] *Pool* v. *Guardian Investment Co., Ltd.*, [1922] 1 K. B. 347, approved (and distinguished) in *I. R.* v. *Fisher's Exors.*, [1926] A. C. 395 (see p. 404), *per* Lord CAVE, L.C., at 402, *per* Lord SUMNER, at 409. Cf. cases cited p. 304, note [66].

[22] *Scottish and Canadian, etc. Investment Co., Ltd.* v. *Easson*, 1922 S. C. 242, 8 Tax C. 265.

[23] Act of 1938, s. 25, this section has been considered at p. 66 (*q.v.*), but it applies "for all the purposes of the Income Tax Acts." S. 12 (1) of the Act of 1937 and s. 24 of the Act of 1938 are also thus applicable, and the interest there dealt with may also have to be included: see "Transactions in Securities . . .," p. 66.

[24] The following paras. must be read subject to the Income Tax Act, 1945; see Chap. 7.

[25] *Coltness Iron Co.* v. *Black*, and the other cases cited below. The prohibitions in Sched. D, Cases I and II, r. 3 (f), (g) (see p. 473), do not cover the whole ground. See also *Golden Horse Shoe (New), Ltd.* v. *Thurgood* (see p. 111), *per* ROMER, L.J., [1934] 1 K. B. 562, *Abbott* v. *Albion Greyhounds, Ltd.*, [1945] 1 All E. R. 308.

[26] *British Insulated, etc. Cables* v. *Atherton*, [1926] A. C. 205, *per* Lord CAVE, L. C., at 213. This passage, in which Lord CAVE amplified the rule previously laid down in *Vallambrosa Rubber Co.* v. *Farmer*, 1910 S. C. 519 (see p. 113), is accepted as furnishing the test of this matter: see, *e.g.*, *Mitchell* v. *B. W. Noble, Ltd.*, p. 114; *Anglo-Persian Oil Co., Ltd.* v. *Dale*, p. 114.

[27] *Farmer* v. *Scottish North American Trust*, [1912] A. C. 118, 127, *per* Lord ATKINSON; see p. 118, *Reid's Brewery* v. *Male*, [1891] 2 Q. B. 1, p. 118. See also the other cases cited in connection with the deduction of interest, pp. 119, 120.

[28] *Anglo-Continental Guano Works* v. *Bell* (see p. 119, note [16]) was a somewhat special case in which the money borrowed was capital; but the distinction does not turn upon the difference between a company and a partnership.

[29] *Highland Ry.* v. *Special Commrs.* (1885), 2 Tax C. 151, see p. 141; *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*, 1914 S. C. 338, see p. 116; *Doughty* v. *Commissioner of Taxes*, [1927] A. C. 327; *I. R.* v. *Scottish Automobile, etc.*, 1932 S. C. 87, see p. 105; *Cowen's Ideal Stamping Co., Ltd.* v. *I. R.* (1935), 19 Tax C. 155.

of depreciation and obsolescence of machinery and plant (and of certain buildings).[30] And the Income Tax Act, 1945, will affect in several ways the principle above stated.[24]

There is no allowance for wastage of capital;[31] and, in arriving at the profits of a coal mine, there can be no deduction in respect of any proportion of the capital expended on making bores or sinking pits;[31] for profits in this connection mean "the entire profit derived from the mine, deducting the cost of working it, but not the cost of making it." It is possible, however, that in, *e.g.*, a tin mine, the sinking of shafts may be a matter of such frequent recurrence that its cost is part of ordinary working expenditure.[32] There is, of course, no allowance for the value of coal exhausted;[33] nor can any deduction be made to represent the annual exhaustion of natural deposits from which nitrates and iodine are manufactured.[34] A sum retained by the lessees of a coal mine instead of paying royalties, in order to recoup themselves for losses incurred by paying a dead rent before the minerals were being worked, is not deductible:[35] nor is a payment made for the surrender of a mining lease which has been found unprofitable,[36] or for a dumping-ground;[37] nor a lump sum payment for the right to do damage to surface land by dumping, subsidence and so forth,[38] but payments made for such damage from time to time as the minerals are worked under each acre of the surface, are deductible, though the payments are all made under an initial arrangement.[39] The price paid for dumps of gold mine tailings purchased for the extraction of gold for sale was properly debited as a payment for raw material.[40] The expenses of promoting a Bill in Parliament for a mineral railway are not deductible:[41] nor is an

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[30] See pp. 131—135

[31] *Coltness Iron Co.* v. *Black* (1881), 6 App. Cas. 315, see *per* Lord PENZANCE, at 326. Thus, the expense of "dewatering" a shaft, before the working of the coal had been disallowed: *United Collieries, Ltd.* v. *I. R.*, 1930 S. C. 215 (corporation profits tax), so has the cost of replacing a chimney: *O'Grady* v. *Bullcroft Collieries, Ltd* (1932), 17 Tax C. 93; or a reservoir: *Margrett* v. *Lowestoft Water Co.* (1935), 19 Tax C. 481.

[32] 6 App. Cas. at 324, 339; *Morant* v. *Wheal Grenville Mining Co.* (1894), 3 Tax C. 298; but such was not the case in *Bonner* v. *Basset Mines, Ltd.* (1912), 6 Tax C. 146.

[33] *I. R.* v. *Farie* (1878), 6 R. 270.

[34] *Alianza Co., Ltd.* v. *Bell*, [1905] 1 K. B. 184; [1906] A. C. 18; cf. *Kauri Timber Co.* v. *Commissioner of Taxes* (*New Zealand*), [1913] A. C. 771. No deduction can be made for the price paid for oil not yet won, nor for such part of the purchase price as represents the cost of oil won in any year: *Hughes* v. *British Burmah Petroleum Co., Ltd.* (1932), 17 Tax C. 286.

[35] *Broughton Coal Co.* v. *Kirkpatrick* (1884), 14 Q. B. D. 491.

[36] *Mallett* v. *Staveley Coal and Iron Co.*, [1928] 2 K. B. 405; followed, *Ellerker* v. *Union Cold Storage Co., Ltd.*, [1939] 1 All E. R. 23; 22 Tax C. 195.

[37] *I. R.* v. *Adam*, 1928 S. C. 738.

[38] *Addie's Collieries, Ltd.* v. *I. R.*, 1924 S. C. 231; 8 Tax C. 671.

[39] *O'Grady* v. *Bullcroft Collieries, Ltd.* (1932), 17 Tax C. 93. But see p. 137.

[40] *Golden Horse Shoe* (*New*), *Ltd.* v. *Thurgood*, [1934] 1 K. B. 548.

[41] *Moore* v. *Hare*, 1915 S. C. 91; 6 Tax C. 572.

instalment of the monopoly value of a licensed house,[42] even though paid by the tenant.[43] The sale of grave-spaces in perpetuity does not give a cemetery company any right to deduct sums set aside to replace capital thus exhausted.[44]

The cost incurred in bringing a branch line of railway to the standard of a main line is not deductible, nor is the extra cost of replacing iron rails and chairs by steel rails and heavier chairs.[45]

A sinking fund set apart to repay a mortgage debt is not deductible, though the proceeding is made obligatory by Act of Parliament;[46] neither is a reserve fund set apart for replacement of buildings or plant deductible,[47] nor a premium paid for a leasehold interest in the business premises.[48]

Such a premium or payment is none the less a capital expenditure, because payable by instalments over a series of years.[49] But annual payments for goodwill (granted by deed for the same term as an underlease) were properly deducted as a revenue expense,[50] as were annual payments for the right to use buildings, though fixed at a percentage on the cost of construction.[51]

Again, there is no deduction for expense due to the removal of machinery to smaller or larger premises.[52] "Multiple" shopkeepers cannot deduct their expenditure on fixtures and fittings for a new shop,[53] or on surrendering the lease of a shop which has been abandoned.[54] The value of a lost ship is a capital loss, and cannot be deducted; the fact that the owners do not insure their ships, but reserve annual sums to form an "insurance fund" of their own, does not entitle them to deduct even those sums.[55] A steamship company cannot deduct a

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[42] *Kneeshaw* v. *Aberlolls*, [1940] 2 K. B. 295.

[43] *Henriksen* v. *Grafton Hotels, Ltd.*, [1942] 2 K. B. 184 (C. A.).

[44] *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516; see *per* Lord McLaren, at 532.

[45] *Highland Ry. Co.* v. *Special Commrs.* (1889), 16 R. 950, 2 Tax C. 485. But as to current renewals and depreciation, see p. 141.

[46] *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101, see p. 102, the decision in *Hall* v. *King's Lynn Mooring Commrs* (1875), 1 Tax C. 23, appears no longer to be good law.

[47] *Forder* v. *Handyside* (1876), 1 Ex. D. 233; *Coltness Iron Co.* v. *Black*, see notes [50],[56].

[48] *Gillatt and Watts* v. *Colquhoun* (1884), 2 Tax C. 76; *McTaggart* v. *Strump*, 1925 S. C. 599; (1925), S. L. T. 487; *Green* v. *Favourite Cinemas, Ltd.* (1930), 15 Tax C. 390, the annual value of the premises, of course, forms a legitimate deduction, see p. 126. See also "Brewers' Profits," p. 116.

[49] *Green* v. *Favourite Cinemas, Ltd.*, note [48]; *I. R.* v. *Adam*, note [57]; cf. *Chadwick* v. *Pearl Life, etc.*, [1905] 2 K. B. 506, see p. 194. In *Coalville U. D. C.* v. *Boyce* (1934), 18 Tax C. 655, the repayments referred to in *Boyce* v. *Whitwick Colliery* (see p. 106) were not allowed to be deducted by the local authority in their water-supply accounts.

[50] *Ogden* v. *Medway Cinemas, Ltd.* (1934), 18 Tax C. 691.

[51] *Racecourse Betting Control Board* v. *Wild* (1938), 22 Tax C. 182.

[52] *Smith* v. *Westinghouse Brake Co.* (1888), 2 Tax C. 357; *Granite Supply Association* v. *Kitton* (1905), 8 F. 55; 5 Tax C. 168.

[53] *Eastmans, Ltd.* v. *Shaw* (1928), 45 T. L. R. 12. Followed as to complete refitting of an existing shop, *Hyam* v. *I. R.*, 1929 S. C. 384.

[54] *Coucher* v. *R. Mille & Co., Ltd.* (1927), 13 Tax C. 216.

[55] *I. R.* v. *Western Steamship Co.*, 1907 S. C. 1005.

sum paid by them to shipbuilders for cancelling an agreement to build them a ship;[56] nor the expenditure incurred on putting into a proper state of repair a ship newly acquired[57] or restored to its owners after seizure.[58] Expenditure on dredging a channel to a shipbuilding works and constructing a deep-water berth,[59] and on converting works for the manufacture of high explosives,[60] is capital expenditure; though in either case the expenditure was incurred primarily in order to carry out a particular contract. Expenditure on the raising of ships sunk at the mouth of a harbour has, however, been held to have been rightly deducted as a revenue expense.[61] But the instalments (spread over thirty years) of a lump sum contributed to a drainage board by a colliery company towards a scheme relieving the latter from a statutory obligation to remedy the effects of subsidence were held to be capital expenditure.[62]

A sum set aside by a company in order that the income may be used for the relief of their invalid employees, and a lump sum placed in the hands of trustees by a company to form the nucleus of a contributory pensions fund for its employees, are capital payments and are not deductible as trade expenses.[63] The same applies to a sum paid for insurance against pensions to former servants, though the payment of pensions may be at the employer's discretion.[64] And when shares whose market value is above par are allotted to a company's servants for services rendered, the difference between par and market value is not deductible as a trade expense.[65]

On the other hand, the necessary expenses of cultivating and managing a rubber estate incurred in the year in which profits are earned are deductible, and it is no answer to the claim for deduction that a part of those expenses produced no return in that year because the whole of the rubber trees were not in full bearing: that fact does not make the expenses of superintendence, weeding, etc., a capital expenditure; but the expenses of clearing and draining the estate and of making roads are capital expenditure. This decision affords a valuable illustration of the test above stated.[66]

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[56] *Countess Warwick Steamship Co.* v. *Ogg*, [1924] 2 K. B. 292.
[57] *Law Shipping Co.* v. *I. R.*, 1924 S. C. 74.
[58] *I. R.* v. *Granite City Steamship Co.*, 1927 S. C. 705; 13 Tax C. 1.
[59] *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267; cf. *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, see p. 131.
[60] *Lothian Chemical Co., Ltd.* v. *Rogers* (1926), 11 Tax C. 508.
[61] *Whelan* v. *Dover Harbour Board* (1934), 18 Tax C. 555.
[62] *Bean* v. *Doncaster Collieries, Ltd.*, [1944] 2 All E. R. 279.
[63] *Rowntree, Ltd.* v. *Curtis*, [1925] 1 K. B. 328; *British Insulated, etc. Cables, Ltd.* v. *Atherton*, [1926] A. C. 205, see p. 99. See also p. 124.
[64] *Morgan Crucible Co., Ltd.* v. *I. R.*, [1932] 2 K. B. 185.
[65] *Lowry* v. *Consolidated African Trust, Ltd.*, [1940] A. C. 645. See *Salmon* v. *Weight*, p. 245.
[66] *Vallambrosa Rubber Co., Ltd.* v. *Farmer*, 1910 S. C. 519, 5 Tax C. 529; see note [26], p. 110; and cf. *Merlimau Rubber Estates, Ltd.* v. *Inland Revenue*, [1923] A. C. 285.

Under a hire-purchase agreement for wagons, the hirers may at the end of the stipulated period pay a further nominal sum to acquire the property in the wagons; the whole of the sum payable annually under the agreement is not a capital payment, but that part only which represents payment for hire during the year is deductible in ascertaining profits, while that part which represents payments for the option to purchase is not.[67]

The amount of a payment may be calculated with a view to recouping the capital of the recipient, or the sum when paid may form part of his capital; but it may yet be a revenue payment as far as the trader who pays it is concerned.[68] Thus, a payment made to a director whose services are dispensed with,[69] a payment for a retiring annuity,[70] or a payment made for cancelling a contract of agency which has become onerous,[71] is not necessarily capital expenditure, though paid in a lump sum; nor are the legal expenses of defending the title to business premises abroad.[72] Conversely, a receipt though calculated with a view to recouping the trader's own capital, may yet be a trading receipt: as where the trader was allowed rebates on the freights of his goods conveyed by a railway company, in consideration of his having constructed sidings at his own expense;[73] but where the rebates are allowed as instalments of the cost of repurchase of the sidings by the railway company, they are payments of capital.[74]

Cost of Acquiring or Financing a Business or of Obtaining Business—Money spent in acquiring a business is no more to be deducted than any other kind of capital expenditure;[75] if a firm of contractors is converted into a company, the company cannot deduct from the profits made out of the contracts acquired from the firm the price paid for acquiring them.[76] A payment made by a bank for the business of another bank, including a concession by a foreign Government of the right of

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[67] *Darngavil Coal Co., Ltd.* v. *Francis*, 1913 S. C. 602, 7 Tax C. 1.

[68] *Mitchell* v. *B. W. Noble, Ltd.*, [1927] 1 K. B. 719, see p. 104, *Racecourse, etc. Board* v. *Wild*, see p. 112.

[69] *Mitchell* v. *Noble, Ltd.*, above, and see note [75]. Contrast *Overy* v. *Ashford Dunn & Co., Ltd.*, p. 104; and *Assd. Portland Cement* v. *Kerr*, [1946] 1 All E. R. 68.

[70] See p. 124.

[71] *Anglo-Persian Oil Co., Ltd.* v. *Dale*, [1932] 1 K. B. 124.

[72] *Southern* v. *Borax Consold., Ltd.*, [1941] 1 K. B. 411.

[73] *Westcombe* v. *Hadnock Quarries, Ltd.* (1931), 16 Tax C. 137.

[74] *Legge* v. *Flatlons, Ltd.* (1939), 55 T. L. R. 828. See also p. 106.

[75] *Royal Insurance Co.* v. *Watson*, [1897] A. C. 1, see p. 125; the payment made to the former manager was held to form part of the purchase price of the business, and was on this ground only disallowed as a deduction; followed, *Bassett Enterprise, Ltd.* v. *Petty* (1938), 21 Tax C. 730, see p. 104. Cf *Ward* v. *Commrs of Taxes*, [1923] A. C. 145, p. 117; and see also *Ward* v. *Anglo-American Oil Co., Ltd.*, p. 118. The payments in *Golden Horse Shoe (New), Ltd.* v. *Thurgood* (see p. 110) were held not to be within this description.

[76] *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239; cf. *Smith* v. *Moore*, [1921] 2 A. C. 13. See *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*; *Alianza Co., Ltd.* v. *Bell*, *Doughty* v. *Commissioner of Taxes*, pp. 110, 111.

issuing notes and so on, is capital expenditure, and would have been so even if the payment had been made solely for the power to issue notes.[77] Money paid for acquiring a business or business rights is not the less capital expenditure if it is paid in a series of annual payments.[78]

If the owner of a business sells it to a company and becomes a shareholder in the company as well as managing director, the company cannot treat the dividend on his shares as being a part of his remuneration as a director, so as to deduct that dividend in computing its profits.[79]

It is not permissible to deduct sums advanced for the purpose of enabling a subsidiary company to supply the principal company with raw material[80] or to carry on its buying agency,[81] or conversely, for enabling a firm to set up a business for which the lending company is promised an agency.[82] A loss made on the sale of shares in companies, purchased in order to secure contracts from those companies, is not deductible as a trade expense.[83] But if a trader subscribes to the guarantee fund of an exhibition in the hope of obtaining contracts for the equipping of the exhibition, he may deduct any sum which he has had to pay in fulfilment of the guarantee.[84] A firm of law agents which acts as such for the promoters of a company, and for the company when incorporated, cannot deduct loans made to the company and found to be irrecoverable.[85]

A limited company cannot deduct the expenses of an application for reduction of capital.[86]

The consideration, however, given for a business may include a payment for stock-in-trade which is a proper debit item; where this is the case a proper amount must be allocated to the latter; and if the consideration consists partly of shares

[77] *London Bank of Mexico* v. *Apthorpe*, [1891] 1 Q. B. 383; the decision was affirmed in C. A., [1891] 2 Q. B. 378, and the appeal on this point was abandoned: see Tax C. 146.

[78] *United Steel Companies, Ltd.* v. *Cullington* (*No.* 2) (1939), 23 Tax C. 71. See *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, p. 195. An annual payment of a similar kind was, however, found not to be a capital payment in *Moore* v. *Stewarts, Ltd.* (1906), 8 F. 1129; 6 Tax C. 501. See *Calders, Ltd.* v. *I. R.*, 1944 S.C. 433. The payer's right to deduct income tax on such payments is discussed, pp. 194 *sqq.* Cf. *Tata Hydro-Electric Agencies, Ltd.* v. *Bombay Commr.*, [1937] A. C. 685.

[79] *Eyres* v. *Finnieston Engineering Co.* (1916), 7 Tax C. 74.

[80] An advance made in a specific transaction for delivery of goods would have been a different matter: *English Crown Spelter Co., Ltd.* v *Baker* (1908), 5 Tax C. 327; cf. *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, see p. 110. See also *Baker* v. *Mabie, Todd & Co., Ltd.* (1927), 13 Tax C. 235.

[81] *Jacobs, Young & Co., Ltd.* v. *Harris* (1926), 11 Tax C. 221.

[82] *Henderson* v. *Meade-King, etc., Ltd.* (1938), 22 Tax C. 97.

[83] *Stott* v. *Hoddinott* (1916), 7 Tax C. 85; *Jacobs, Young* v. *Harris*, note [81].

[84] *Morley* v. *Lawford* (1928), 45 T. L. R. 30.

[85] *Hagart and Burn-Murdoch* v. *I. R.*, [1929] A. C. 386; followed where loans had been made to private clients: *C. & D.* v. *I. R.*, 1939 S. C. 658; 23 Tax C. 8.

[86] *Archibald Thomson, Ltd.* v. *I. R.*, 1919 S. C. 289, 7 Tax C. 158.

issued as fully paid, the nominal value of these is to be added to any cash payment before the total is so apportioned.[87]

War Risk Payments, etc.—There is a general prohibition against deducting payments made under contracts or arrangements for any form of indemnification in respect of war damage; but payments under policies issued under Part II of the War Risks Insurance Act, 1939,[88] or similar enactments in foreign countries, and for marine or aircraft insurance or insurance of goods in transit, are excepted: and if the payment is made for other risks also, the prohibition extends only to that part which is attributable to war damage.[89] Again, the War Damage Act, 1943, specifically prohibits deduction of payments undertaken by direct or indirect contributors or their mortgagees, of premiums payable in pursuance of the schemes operated under Part II of the Act, and of expenditure on repairing or otherwise making good war damage so far as repayable under the Act or the schemes.[90] Further, the deduction is prohibited of payments of benefit made by employers on account of the incapacity, retirement or death of employees owing to war injuries: or of premiums or contributions paid by employers in order to secure such benefits to employees.[91] But the prohibitions relating to employees are not to apply if either the benefit, the premium or the contribution was payable under an arrangement made before September 3rd, 1939, except so far as it has been increased by a subsequent variation of the arrangement;[92] and if the benefit would have been payable under an established practice apart from war injuries, the prohibition applies only to any excess payment due to the war injuries; similarly it applies only to any increase in the premium or contribution that is due to this added risk.[93]

Brewers' Profits—The principles stated in the preceding pages as to the allowance of "proper debit items,"[94] and as to the distinction between capital and income in receipts and in expenditure,[95] are exemplified in a series of cases decided with regard to the computation of the profits of trade carried on by brewing companies; it may be convenient to deal with this series as a whole.

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[87] *Osborne* v. *Steel Barrel, Ltd.*, [1942] 1 All E. R. 634 (C. A.), p. 100; and see the remarks, at 636, on *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*, p. 110.
[88] 2 & 3 Geo. 6. c. 57.
[89] No. 2 Act of 1940, s. 12 (1), (3), see p. 647; for the meaning of "war damage" here, see sub-s. (4).
[90] 6 & 7 Geo. 6, c. 21, s. 113, see p. 675.
[91] Finance Act, 1941, s. 17, see p. 655; "war injuries" are defined as in the Personal Injuries, etc. Act, 1939 (2 & 3 Geo. 6, c. 82), see p. 630.
[92] S. 17 (3), proviso (i).
[93] S. 17 (3), proviso (ii); sub-ss. (4) (5); in each of these cases the Commissioners of Inland Revenue are to decide whether the modifying enactment is applicable.
[94] See pp. 98—100. [95] See pp. 104, 110.

It is now established that the holding of tied houses may be a necessary incident in a brewing business, and that expenses incurred by the brewer in connection with such a house may be a necessary outlay for the purposes of his own trade, and none the less so because they enure also to the benefit of the tenant of the house.[96] Upon this view it has been decided that the following deductions are admissible in ascertaining the profits of brewers: the share of the compensation levy deducted by the tenant of the tied house against the brewing company who were his landlords;[97] the excess of the rent paid by the brewers for a leasehold house or the Schedule A assessment of a freehold house on the one hand, over the rent received from the tied tenant on the other hand;[98] expenses of repair of these houses actually paid by the brewers; rates and taxes paid by them in place of the tenant; premiums of insurance against fire and against loss of licence; and legal expenses in connection with renewals of licences, surrenders and assignments of leases, and so on.[99] The excess of the rent paid (or the Schedule A assessment) over the rent received is to be calculated separately for each house; and is not to be reduced because in respect of other houses the rents received are more than the rents paid or the Schedule A assessment; in calculating rent received, any premium paid by the tenant is to be brought into account.[1] Such a premium is spread over the tenant's term of years, and if the brewery business is sold with the tied house during that term, the acquiring company must continue to bring into the account the yearly portions of the premium.[2] On the other hand, the amount of the excess debited is not to be increased by reason of premiums paid, money spent on improvements, or debts foregone, by the brewers.[3]

The above principle had been applied many years previously by allowing a deduction for loss on loans advanced by brewers to persons who dealt or had agreed to deal with them; it does not appear whether the borrowers were "tied" or "free" or

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[96] *Smith* v. *Lion Brewery Co., Ltd.*, [1911] A. C. 150; *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] A. C. 433 (see p. 98), overruling *Brickwood* v. *Reynolds*, [1898] 1 Q. B. 95.

[97] *Smith* v. *Lion Brewery Co., Ltd.*, above; as to monopoly value, see p. 112, notes [42], [43].

[98] The rent charged to a tied tenant is, of course, less than the annual value of the house, by reason of the burden imposed on the tenant by the covenant "tying" him to buy his liquors from the landlord. As to deduction for annual value of premises occupied for the purpose of the business, see p. 126.

[99] *Usher's Wiltshire Brewery* v. *Bruce*, above. As to fire insurance premiums, contrast *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725, see p. 100. The expenses of a campaign against prohibition have been held not to be deductible under the New Zealand Income Tax Act: *Ward & Co., Ltd.* v. *Commrs. of Taxes*, [1923] A. C. 145. See also p. 45, notes [89], [90].

[1] *Hoare & Co., Ltd.* v. *Collyer*, [1932] A. C. 407.

[2] *Lucas* v. *Hammerton & Co., Ltd.*, [1944] 2 All E. R. 133.

[3] *Collyer* v. *Hoare & Co., Ltd.* (*No.* 2), [1938] 1 K. B. 935. Cf. note [48], p. 112.

both; but it was found that the making of the loans and advances was essential to the realising of the brewers' profits.[4]

Payments for the right to call for the surrender of an existing licence, if the licensing justices shall require it as a preliminary to the grant of a new licence, and other expenses of applying for new licences,[5] or removal of a licence,[6] are not deductible.

A payment of damages to a guest at an inn for injuries incurred by the fall of a chimney owing to the negligence of the company's servants was disallowed as a deduction, because such damages were not incidental to the trade in the inn.[7]

Where a brewing company pays to a holding company rents for tied houses and the rents exceed the annual value, the holding company may be chargeable with tax on the excess, not indeed under Case I, but under Case VI.[8]

Interest and Annuities—If any annual interest or any annuity or other annual payment is a necessary expense incurred in earning the profits, it must be deducted in ascertaining the amount of those profits, and cannot be described as payable out of them.[9] The specific prohibition[10] against the deduction of annual interest, annuities, etc., applies only where these are payable out of "the profits or gains" and is probably superfluous, because this expression means profits ascertained by an ordinary trading account,[11] irrespective of the destination of the profits when made.[12] It has also been sought to treat the prohibition against deductions in respect of capital as prohibiting a deduction of interest on capital.[13]

In spite, then, of the presence of these prohibitory rules, if a company trades in annuities, selling them in consideration of a price received for them, those annuities are in the same position as regards income tax as coal or corn sold, and the cost to the seller of the annuities (that is, the money annually

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[4] *Reid's Brewery Co., Ltd.* v. *Male*, [1891] 2 Q. B. 1, see p. 110; as to bad debts, see p. 102.

[5] *Southwell* v. *Savill Bros., Ltd.*, [1901] 2 K. B. 349.

[6] *Mores* v. *Stedeford* (1934), 18 Tax C. 457.

[7] *Strong & Co., Ltd.* v. *Woodifield*, [1906] A. C. 448, see p. 100. The trade of the inn was that of the brewing company, and it was managed by their servant.

[8] *Whelan* v. *Alfred Leney, Ltd.*; *Loughnan* v. *Dolphin Brewery, Ltd.*, [1936] A. C. 393, see p. 71; and Act of 1940, s. 16, p. 51.

[9] *Gresham Life Assurance Co.* v. *Styles*, [1892] A. C. 309, see below; *Paterson Engineering Co., Ltd.* v. *Duff* (1943), 25 Tax C. 43. As to registered societies and other "mutual" companies, see p. 154.

[10] Sched. D, Cases I and II, r. 3 (l), p. 474. Interest on money borrowed for one year only is "annual interest" within this rule: *Ward* v. *Anglo-American Oil Co., Ltd.* (1934), 19 Tax C. 94. As to the right of the payer to deduct and retain tax, see p. 185.

[11] See p. 96.

[12] See pp. 102 *sqq.*

[13] R. 3 (f), (g), see p. 473; in *Farmer* v. *Scottish North American Trust, Ltd.*, [1912] A. C. 116, 129, the H. L. refrained from deciding whether the third rule in Sched. D of the Act of 1842, now replaced by r. 3 (f), has this effect or not. As to capital expenditure, see p. 110.

paid to the holders) must be deducted from the gross receipts earned by selling them just as the cost price of the coal or corn is deducted. "The Legislature intended all traders, whether in groceries, annuities, or other articles of commerce, to be assessed upon the same footing."[14] Upon the same principle, an investment company which borrows from its bankers for the purpose of its daily operations an overdraft that may fluctuate in amount from day to day is entitled to deduct the interest payable on that overdraft, because the daily borrowing and lending of money is a part of the company's trade.[15] But if such borrowing is due to the exigencies of one partner, and not to the necessities of the business, the interest on the short loans cannot be deducted.[16] Interest on sums employed in the trade as working capital (other than such day-to-day accommodation as is described above) is not deductible, although the rates at which it is charged may vary from day to day.[17]

On the other hand, interest on such a permanent security as debenture bonds[18] or a mortgage of rates[19] is not deductible; nor can a payment for capital so borrowed be deducted because it takes the shape of a bonus at the time of repayment instead of that of interest;[20] brokers' charges and other expenses of raising debentures are not deductible.[21] It has been decided that interest paid by contractors, during the construction of works, to the shareholders of companies by whose order the works were constructed was not deductible in ascertaining the profits of the contractors;[22] but it is submitted that in certain circumstances such payments might be an expense necessary to the earning of the contractors' profits.

The right possessed by a company dealing in annuities to deduct annuities in ascertaining its profits, does not enable it to retain for its own use the income tax deducted by it in paying those annuities; and it has been held (though it may be doubted whether the decision follows necessarily from that proposition) where the company's dividends on investments were taxed at

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[14] *Gresham Life, etc.* v. *Styles*, [1892] A. C. 309, *per* Lord WATSON, at 318.

[15] *Farmer* v. *Scottish North American Trust, Ltd.*, note [13]; *Reid's Brewery Co.* v. *Male*, see p. 118; *Gresham Life, etc.* v. *Styles*, note [14], and *Goslings and Sharpe* v. *Blake*, see p. 162. As to shares, etc., held by investment companies, see p. 109.

[16] The decision in *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, as explained in *Farmer* v. *Scottish, etc Trust*, note [15], goes no further than is stated in the text.

[17] *European Investment Trust, Ltd.* v. *Jackson* (1932), 18 Tax C. 1; *Duff* v. *Ascot Heaters, Ltd.* (1942), 24 Tax C. 171; *Bridgwater* v. *King* (1943), 25 Tax C. 385.

[18] *Alexandria Water Co.* v. *Musgrave* (1883), 11 Q. B. D. 174; but see note [16]

[19] *Portobello T. C.* v. *Sulley* (1890), 27 S. L. R. 863; 2 Tax C. 647, see p. 76.

[20] *Arizona Copper Co.* v. *Smiles* (1891), 19 R. 150; 3 Tax C. 149.

[21] *Texas Land and Mortgage Co* v. *Holtham* (1894), 3 Tax C. 255.

[22] *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239; both BOWEN and FRY, L.JJ., declined to discuss the point as it had not been raised below: and the facts are not fully stated in the report. See p. 114.

the source, that it could not deduct the whole of those dividends in rendering an account of its profits, but must write back the amount of the annuities paid.[23] In effect the annuities were treated as being paid out of the dividends alone; and to that extent this decision appears to run counter to that of the House of Lords in *Gresham Life Assurance Society* v. *Styles*.[24]

Payments for User of Patents—There is an express prohibition against deducting any royalty or other sum paid in respect of the user of a patent in ascertaining the profits of the trader who makes the payment.[25] Before the passing of the Act of 1918, it was held that this rule did not apply in any case where the payer could not deduct and retain tax against the person owning the patent;[26] but as the prohibition against deduction of royalty is now separated from that enabling the payer to deduct and retain the tax,[27] that decision seems obsolete. There will be relief for certain expenditure on patents.[27a]

Dealings in Securities—If the trade consists wholly or partly in dealing in securities (including stocks and shares), and the trader agrees to buy or acquire any securities and by the same or a collateral agreement to sell back or re-transfer the same or any similar securities, or acquires (and exercises) an option to do so, the transaction is to be disregarded in computing the profit or loss of his trade; this applies only if the result of the transaction is to make any interest receivable by the trader, and if the agreements were made on or after April 6, 1937.[28] It is the vendor and re-purchaser who is charged with tax on the interest in such a case.[29] Where such a trade is carried on in this country by a non-resident, it does not get the benefit of exemption under Schedule C.[30]

Where a finance company acquires securities by purchase, the initial figure at which these should be entered for the calculation of profits is their cost to the company, and not their market value at any given date.[31] Net dividends credited in contango transactions (in which no shares pass) are profits of such a company's trade.[31a]

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[23] *Hancock* v. *General Reversionary, etc. Co.*, [1919] 1 K. B. 25; it may be that the company should have paid in full without deducting tax: see pp. 189—191.

[24] See p. 174, note [19].

[25] Sched. D, Cases I and II, r. 3 (m), see p. 474. *Paterson Engineering Co., Ltd.* v. *Duff* (1943), 25 Tax C. 43. This rule operates whether the payment is capital or income; contrast *Jones* v. *I. R.*, [1920] 1 K. B. 711, p. 203.

[26] *Lunston Monotype Corporation* v. *Anderson*, [1911] 2 K. B. 1019 (Act of 1907 (7 Edw. 7, c. 13), s. 25 (1)); this decision was not followed in *Boyd* v. *Hurelork*, 1918 S. C. 727; 7 Tax C. 321.

[27] See General Rule 19 (2), p. 490. And as to deduction where the payment is not wholly made out of profits, see r. 21 as amended, *ibid.* [27a] See Chap. 7

[28] Act of 1937, s. 12 (3); see also sub-ss. 4—6. The time limit last mentioned does not apply to a claim for relief under s. 34 of the Act of 1918, see p. 151.

[29] S. 12 (1), see p. 67.

[30] See p. 62; Act of 1940, s. 21 (1), see p. 640; as to computation, see sub-s. 2.

[31] *Craddock* v. *Zevo Finance Co., Ltd.*, [1944] 1 All E. R. 566.

[31a] *Multipar Syndicate, Ltd.* v. *Dewitt*, [1945] 1 All E. R. 298.

Life Assurance Profits—In computation under Case I,[32] the profits of a life assurance business (including that of granting annuities) are ascertained separately from those of any other class of assurance business carried on by the company;[33] but if it makes a loss on its life assurance business it may set that loss off against the profit on its other classes of business, in the same way as any other person or company carrying on more than one business.[34] In ascertaining, however, whether it has made such a loss, the income derived from the investments of its life assurance fund is to be treated as profits of the life assurance business.[35]

The reason for this separate treatment is as follows:—

". . . Life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contracts may endure for the policy-holder's life or for a certain number of years stated, or till the holder attains a certain age; and the company may be bound on the expiry of a fixed number of years, or on the attainment of a certain age by the policy-holder, either to pay a lump sum or an annuity for the remainder of the policy-holder's life. The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years, or annually during the holder's life, or during the subsistence of his policy. The premiums, therefore, do in no sense represent the annual profits and gains of the company. In like manner the amount of claims in one year arising on the death of persons insured, or as a deduction from the company's receipts for the year, cannot afford any criterion for the ascertainment of profits . . . The profits and gains can be ascertained only by actuarial calculations . . ."[36]

Industrial life assurance business is treated as a separate business from ordinary life assurance business though carried on by the same company.[37]

So far as a company carries on a mutual insurance business, its profits are reduced by any surplus returnable to the participating policy-holders who are the owners of that business[38]

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[32] As to the option to charge under other cases, see p. 94.

[33] Sched. D, Cases I and II, r. 15 (1), see p. 478. [34] See p. 152.

[35] R. 15 (2). This provision is not affected by Act of 1937, s. 13: see proviso (a), p. 592. As to profits on investments, see the cases cited on p. 104; and as to loss, see *Royal Insurance Co., Ltd.* v. *Stephen*, p. 123. See also Act of 1940, s. 21 (1) (2), p. 640, as to computation of profit and loss in the case of non-resident companies. A special relief is given by No. 2 Act of 1940, s. 9 (3) (4), p. 646.

[36] *Scottish Union, etc.* v. *Smiles*; *Northern Assurance Co.* v. *Russell* (1889). 2 Tax C. 551 (see p. 104); *per* INGLIS, L.P., at 557-8; approved by Lord SHAW in *Liverpool and Globe, etc.* v. *Bennett*, [1913] A. C. 617. See also *Last* v. *London Assurance, etc.* (1884), 12 Q. B. D. 401, *per* DAY, J.

[37] Finance Act, 1923, s. 16 (3), see p. 518.

[38] *New York Life, etc.* v. *Styles* (1889), 14 App. Cas. 381, see p. 72.

or by any other discount or rebate payable to members and calculated by reference to the amounts paid by, or the transactions carried out with, those members.[38] If a business is also done with outsiders, such surplus is not part of the assessable profits of that business.[39] But if there are shareholders and the participating policy-holders are not the owners of the business, bonuses returnable to these policy-holders in accordance with the terms of their policy form part of the profits and are not deductible as expenses,[40] even though the capital of the shareholders who own the business is trivial in comparison with the volume of trade and their dividend is limited.[41] Where the company carries on more than one kind of insurance business, this rule applies to any part of the business in which there is not complete identity between the contributors and the participators.[42]

Such part of the profits as belongs to policy-holders or annuitants, or is allocated to them, or reserved for them, or expended on their behalf, is excluded in computing the profits of life assurance business under Case I until any of the profits so excluded cease to be reserved (without being so allocated or expended), when they will be brought in as profits for the year then current.[43]

Fire Insurance Profits—Fire insurance policies are mostly contracts for one year only, but some policies of this kind cover risks for five to seven years. To take for each year the sum total of the premiums received and that of the losses paid and subtract the one from the other, without regard to the facts that the premiums cover risks running on into subsequent years and that the losses include losses arising out of policies issued in previous years it not an accurate or scientific method, but may be a useful working rule. Where this rule was not shown to have produced an inequitable result, the Courts refused to say that it should not have been applied, and to allow an arbitrary deduction (of 33⅓ per cent.) from one year's profits for risks of the succeeding year in respect of annual policies which did not expire on the day when the accounts of the year were made up.[44]

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[38] Act of 1933, s. 31 (1) (3), see p. 568.
[39] *New York Life, etc.* v. *Styles* (1889), 14 App. Cas. 381.
[40] *Last* v. *London Assurance, etc.* (1885), 10 App. Cas. 438, see p. 72.
[41] *Equitable Life, etc.* v. *Bishop*, [1900] 1 Q. B. 177.
[42] *Municipal Mutual Insurance, Ltd.* v. *Hills* (1932), 16 Tax C. 430. The decisions in this and the two previous cases do not appear to be superseded by Act of 1933, s. 31 (3), which relates only to profits arising from transactions of the company with its members: see sub-s. 1.
[43] Act of 1923, s. 16 (1), see p. 517.
[44] *Imperial Fire, etc.* v. *Wilson* (1876), 1 Tax C. 71; *Scottish Union, etc.* v. *Smiles*; *Northern, etc.* v. *Russell* (1889) 16 R. 461; 2 Tax C. 551, see p. 105; *General Accident, Fire, etc.* v *McGowan*, [1906] A. C. 207. The decision of the House of Lords in the last case went no further than is here stated, and the headnote in the Law Reports is misleading: see *per* Earl LOREBURN, [1912] A. C. 453.

But as has already been seen, "there is no rule of law as to the proper way of making an estimate," and "what was a good method once may become inaccurate or obsolete";[45] and where the business is of such a character that it would be unfair to refuse a deduction of this kind, it is proper to carry forward annually at the close of the year a percentage of the premium income in order to allow for unexpired risks.[45] In the case thus decided, it was contended that 40 per cent. was recognised in the insurance world as being the minimum allowance for this purpose, and the Crown did not contest the percentage. In most cases, therefore, it seems that a company which carries on a fire insurance business on modern lines, and whose distributed profits are not such as to make it obvious that such a deduction is unfair to the Revenue,[46] will succeed in obtaining an allowance of this nature and probably at that percentage.

It is a necessary part of a fire insurance company's business that it should hold and occasionally sell investments; any profit or loss due to realisation of investments must be included or deducted in arriving at the company's income;[47] and such a deduction must be made if the company holds stocks of other companies which are amalgamated, and upon the amalgamation receives other stocks in substitution, with the result that a loss is incurred by the value of the new stocks being less than the cost price of the old stocks.[48]

Land Development—Several points have been decided in regard to the computation of the profits of a company which carries on a trade of land development or of building and selling houses. For instance, where the developer buys ground, builds houses and creates feu duties which he sells or retains, the whole difference between the price paid and the price received does not represent profits; the price received has clearly been earned in part by the expense of building the houses, but the amount deducted for expenditure must, where the feu duties are retained, exclude the cost of their creation; where the feu duties are sold, but not the ground, there must also be some reduction of cost.[49] However, the market value of ground annuals created is to be brought into the account as a credit item, building and other costs being of course debited.[50] In England, where a ground rent is created, the cost of creating it, or its market value, is to be brought in as a credit item, whichever is the less; when the

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[45] *Sun Insurance Office* v. *Clark*, [1912] A. C. 443. The paragraph in the text is based on Lord LORBBURN'S speech. An extract from Lord HALDANE'S speech is given at p. 98.

[46] *Ibid per* Lord LORBBURN, at 453.

[47] See Act of 1940, s. 21 (1), p. 640.

[48] *Royal Insurance Co.* v. *Stephen* (1928), 44 T. L. R. 630: see p. 105.

[49] *Furtado* v. *Cardonald Feuing Co.*, 1907 S. C. 36; *M'Millan* v. *I. R.*, 1942 S. C. 224.

[50] *I. R.* v. *Emery*, [1937] A. C. 91; 1936 S. C. (H. L.) 36.

ground rent is sold, any excess over the above will be credited as a receipt in the year of realisation.[51] Any premiums are to be credited when received.[51]

On the sale of a house through a building society, if the builders receive from the society a sum which leaves them with a credit in the society's books, subject to a contingent liability in case the purchaser makes default, the builders are not to include in their profits the whole of the agreed purchase prices of the houses sold, but only (a) the deposits received from the purchasers, and (b) the actual sums received from the building society, together with (c) the value at the time of the sale of the credits referred to; but if an actuarial valuation is found impracticable, the builders are only to include any parts of these credits which are in fact released to them by the building society during the year of account.[52] Again, where the builder receives from the purchaser (in addition to his deposit) the sum advanced to the latter by the building society and an agreement secured by a second mortgage or a promissory note to pay the balance of the purchase-price with interest by instalments spread over a term of years, that balance is not to be included in the profits at its face value, but at a valuation which takes into account the risks of long credit on doubtful security, if that is practicable.[53]

If land is sold for development with a condition that a further sum (in addition to the original purchase price) shall be paid on resale, the aggregate of both sums may be the true cost to be deducted before arriving at the trade profits.[54]

Receipts from lettings to tenants by a company which owns lands or buildings are not profits of a trade.[55] A lump sum received from the owners of the land on their withdrawal of a number of plots from a building agreement was a trade receipt of the builders;[56] as was compensation for refusal of ribbon development.[56a]

Retiring Allowances and Gratuities—Pensions, allowances or gratuities paid by employers to their servants on retirement may be deductible (even though the contract of employment gives the employee no right to any such payment) in ascertaining the profits of the trade or profession of the employer, because the expectation of receiving such payments on retirement

[51] *Hughes* v. *B. G. Utting, Ltd.*, [1940] A. C. 463; applied in *Heather* v. *Redfern, Ltd.* (1944), 171 L. T. 127. As to what is or is not a trade expense, see *Homelands, Ltd.* v. *Margerison* (1943), 170 L. T. 152.

[52] *Harrison* v. *John Cronk & Sons, Ltd.*, [1937] A. C. 185; contrast *Lock* v. *Jones* (1941), 23 Tax C. 749, see p. 100. See also *Ruskin Investments, Ltd.* v. *Copeman*, p. 237.

[53] If that is impracticable, the method of calculation is left to the Commissioners: *Absalom* v. *Talbot*, [1944] A. C. 204.

[54] *Bennett* v. *Bennet* (1937), 21 Tax C. 209.

[55] *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432; see, however, pp. 48 *seq.*

[56] *Shadbolt* v. *Salmon Estate, Ltd.* (1943), 25 Tax C. 52. See also *Assd. London Properties, Ltd.* v. *Henriksen* (1944), 25 Tax C. 46.

[56a] *Johnson* v. *Try, Ltd.*, [1946] 1 All E. R. 165.

attracts persons of the class desired into the service of the employer at smaller salaries than they would otherwise demand.[57]

If the employer purchases an annuity for the retiring employee instead of himself making an annual payment, the purchase price of the annuity may be deductible.[58] But no such deduction is admissible where the payment to the employee is in fact made as a part of the consideration for the transfer of a business.[59]

The principle laid down appears, however, to apply to any payments made by an employer to widows or dependants after the death of an employee as well as to payments made to the employee himself.[60]

Contributions to Superannuation Funds—Any sum paid by an employer by way of contribution towards a superannuation fund is, under specific provisions, deductible as an expense of his trade,[61] subject to the following conditions: First, the fund must be approved by the Commissioners of Inland Revenue.[62] Secondly, if the sum contributed by an employer is an ordinary annual contribution,[63] it is to be deducted as an expense incurred in the year in which the sum is paid; if it is not, the Commissioners of Inland Revenue may direct that it shall be spread over a period of years.[63] If contributions are repaid to an employer, the trustees of the fund are to deduct tax thereon at the rate in force in the year of repayment, and the amount repaid is deemed to be income of the recipient for that year.[64] Apart from the provision above referred to, a lump-sum contribution by an employer is not deductible in arriving at profits, because it is a capital expenditure.[65]

Business Premises: Annual Value and Depreciation—Any rent actually paid for the business premises and not payable under a "long lease"[66] is deductible as an expense necessarily incurred in order to earn the profits;[67] even though it may be

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[57] *Smith* v. *Incorporated Council of Law Reporting*, [1914] 3 K. B. 674. Cf. *Mitchell* v. *B. W. Noble, Ltd.*, [1927] 1 K. B. 719, see p. 114.

[58] *Hancock* v. *General Reversionary, etc. Co., Ltd.*, [1919] 1 K. B. 25; but see the cases cited in note [65].

[59] *Royal Insurance Co.* v. *Watson*, [1897] A. C. 1, see p. 114, note [75].

[60] Contributions towards retiring allowances, etc. made by the employee are discussed p. 221. There is no deduction for benefits such as are considered above, if due to war injuries: see p. 116.

[61] S. 32 (3); the conditions of approval, etc., are dealt with, pp. 291-2.

[62] Defined in the Regulations made under s. 32, reg. 5: see p. 745; the amount deductible is regulated by reg. 6.

[63] S. 32 (1), proviso (a); note that the Commissioners have no power to disallow the deduction, but only to direct when and in what portions it shall be allowed. A contribution made on the amalgamation of companies was considered in *Lowe* v. *Peter Walker, etc., Ltd.* (1935), 20 Tax C. 25.

[64] Regulations made under s. 32, reg. 7.

[65] *Rowntree* v. *Curtis*, [1925] 1 K. B. 328; *British Insulated, etc. Cables, Ltd.* v. *Atherton*, [1926] A. C. 205; *Morgan Crucible Co., Ltd.* v. *I. R.*, see p. 113.

[66] As to "long" and "short leases," see p. 49 and note [71], below.

[67] *Union Cold Storage Co., Ltd.* v. *Adamson* (1930), 16 Tax C. 293. If the premises are no longer used for the purposes of the business, but the rent continues to be payable, it may still be deductible: *I. R.* v. *Falkirk Iron Co., Ltd.* (1933), S. L. T. 283;

[68] S. 32 (1).

paid by a partnership to one of the partners.[68] So also, where a " short lease " of another building is taken because its control is essential to the use of the trade premises themselves, the net rent of the building is deductible.[69] Again, the annual value of premises situate in the United Kingdom which are exclusively used for business purposes, and for which rent is not paid, is to be taken into account in ascertaining the balance of profits and is properly to be deducted. The reason for the deduction has been variously put upon the grounds that that deduction is " an essential element to be taken into account in ascertaining the amount of the balance of profits," that it is " included in a very broad construction of the provision relating to disbursements and expenses,"[70] or that it follows from the express words that " the computation of tax shall be made exclusive of the annual value of lands . . . occupied for the purpose of the trade or profession, and separately assessed and charged under Schedule A."[71] On any view, the deduction for annual value must be computed without regard to the value of non-rateable machinery.[72]

A bank which for its own purposes requires the manager of one of its branches to reside in a portion of the premises and takes no rent from him is entitled to a deduction of the whole annual value of the premises including the residential portion; the bank are in the same position as if that portion were used in any other way for its purposes and business.[73] A prohibition against deducting the rent or annual value of any greater portion of a dwelling-house, etc., than is used for the purpose of the trade or profession applies only to a dwelling-house occupied or rented by the person assessed under Schedule D; such a deduction is not in general to be more than two-thirds of the rent or annual value of the whole house.[74]

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17 Tax C. 625, so, where the disused premises are sublet at a lower rent, the difference may be deducted: *Hyett* v. *Lennard*, [1940] W. N. 214. Where the ' rent " was designed to recoup the landlord for structural improvements, it was held not to be deductible: *Ainley* v. *Edens* (1935), 19 Tax C. 303; it is submitted that the decision is incorrect, and that the purpose of the payment was immaterial. As to a long lease, see p. 53, note [66]. [68] *Heastie* v. *Veitch*, [1934] 1 K. B. 535.

[69] *Allied Newspapers, Ltd.* v. *Hindsley* (1937), 21 Tax C. 422 (C. A.).

[70] *Russell* v. *Town and County Bank* (1888), 13 App. Cas. 418, *per* Lord HERSCHELL, at 425-6. Cf. the extracts from the speeches in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, set out pp. 98, 99. The Sched. A tax on " annual value " is dealt with in Chap. 2.

[71] *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21; see p. 137; *per* SCRUTTON, J., at 28, 29, dealing with the rule as it appeared in the Act of 1842. The words in the text are taken from r. 5 (1) of the rules applicable to Cases I and II as amended by the Act of 1926: see p. 474. Even if the land is not assessed under Sched. A owing to a statutory exemption, a deduction of the estimated annual value is admissible: *Sinclair* v. *Cadbury Bros., Ltd.*, [1934] 2 K. B. 389. Rent payable under a " long lease " of such land would be deductible: Act of 1940, s. 13 (1), see p. 6.6

[72] Act of 1936, s. 22 (1), see p. 31.

[73] *Russell* v. *Town and County Bank*, note [70]; see also *Tennant* v. *Smith*, p. 300; and *cf.* the cases cited in note [27], p. 38.

[74] Cases I and II, r. 3 (c), as amended by Finance Act, 1921, s. 31 (see p. 473), *e.g.*, a dwelling-house occupied by a solicitor or a physician, who uses a part of it as an office or a consulting room.

In the case of lands used for the purposes of the trade which are situated abroad, rent actually paid may be deducted as in the United Kingdom; but there is no deduction for annual value.[75] There may, however, be an allowance for depreciation, as described below.

The deduction for annual value may not exceed in amount that of the Schedule A assessment of the lands in question as reduced for purposes of collection[76] as it stands in the year of which the profits are being calculated.[77] Thus, where a person owns the property on which his trade is carried on, subject to a feu duty, he cannot deduct as an expense of his trade a casualty payable in terms of the feu charter.[78]

In Scotland, it appears that the relief given in respect of rates and other burdens will not affect the amount of the above deduction, although the trader is himself the owner of the lands.[79]

A trader who owns " mills, factories or other similar premises " or who occupies such under a tenancy by which the whole burden of depreciation falls upon him, obtains a deduction in respect of their depreciation, in arriving at profits for Schedule D.[80] In general, this deduction will be equal in amount to the repairs allowance made from annual value under rule 7 of No. V of Schedule A, or to a fraction of the rating value, whichever is less; the fraction is $\frac{1}{8}$th in London and Scotland, and $\frac{1}{4}$th elsewhere.[81] But a different rule is applied to mills, factories and similar premises which are situate abroad, or which are assessed with concerns, such as mines, ironworks, gasworks, formerly included in No. III of Schedule A, or which consist of or comprise electricity works or brickworks, and in the case of premises which enjoy a statutory exemption from tax. Here, the deduction is 1 per cent. of the actual cost to the trader of any buildings of either of two kinds somewhat minutely described. In calculating the cost of the building the cost of the site is included; and that of any non-rateable or " process " machinery, or machinery which would not be rateable if the premises were in this country, or were not exempt, is to be

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[75] R. 5 (1), 2nd para., see p. 474; the decision in *Stevens* v. *Boustead*, [1918] 1 K. B. 382, is therefore no longer applicable.

[76] Sched. A, No. V, r. 7, see p. 459.

[77] R. 5 (2), see p. 443; *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21, see note [71]. But see *Hoare & Co., Ltd.* v. *Collyer*, p. 117, note [1].

[78] *Dow* v. *Merchiston Castle School, Ltd.* (1921), 58 S. L. R. 585; 8 Tax C. 149.

[79] *I. R.* v. *Scottish Central Electric Power Co.*, 1928 S. C. 260, 13 Tax C. 331. Where the owner is the trader, the amount paid as " owner's rates " is not again deductible as a trade expense: *Same* v. *Same*, 1931 S. C. 36 (H. L.); 15 Tax C. 761.

[80] Act of 1937, s. 15 (1), (5) see p. 594. Relief for A. R. P. works is not to reduce the allowance: Act of 1938, s. 17 (4), see p. 598. The " whole burden " is not so placed by ordinary covenants to maintain and repair. *Boarland* v. *Pirie, Ltd.*, [1940] 2 K. B. 491 (C. A.). Under Income Tax Act, 1945, this allowance will cease; p. 162.

[81] S. 15 (2); " rating value " is defined in sub-s. 6 (c), and " repairs allowance " in para. (d). See p. 32.

excluded.[82] There is provision for a proportionate deduction in case of a reduced period of use or occupation, and for an adjustment in case of alterations to premises.[83] The phrase "mills, factories or other similar premises" cannot be said as a matter of law to apply to the whole of a gas undertaking.[84] It includes cold storages[85] and grain elevators;[86] and may include dining-rooms, etc. for employees.[87]

A provision has been enacted for allowing exceptional depreciation, in respect of buildings provided for a trade in 1937 or later, where this is ascribable to the consequences of the war; this is to be ascertained as from a date not yet determined; but in the meantime allowances may be made provisionally.[88]

In addition to the above, expenditure on repairs of business premises may also be deducted, but the amount must not exceed what has actually been spent in the period or year of account.[89] If, however, the expenditure is incurred by reason of war damage, it may not be deducted in so far as there is a right to recoupment under the War Damage Act or schemes.[90]

Allowances for capital expenditure on industrial buildings and structures will be made under the Income Tax Act, 1945.[90a]

Trade Associations : Redundancy Schemes --Although it may be reasonable for a trader to subscribe to a trade association, it is not the case that the amount or the whole amount of every such subscription may be deducted in ascertaining the profits of the trade. It depends upon the purposes to which the money is applied whether the subscription, or a particular portion of it, is deductible or not. A trade association may apply its funds to very different purposes; and "some of these purposes might involve amounts which if charged in the account of the individual member would be proper deductions as being expenses incurred with a view to earning profits, whereas others might not."[91]

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[82] Sub-s. 3; "electricity works" are defined in sub-s. 6 (a). As to non-rateable machinery, see Act of 1936, s. 22, p. 586 [83] Sub-s. 4.

[84] *Largo, etc. Gas Co., Ltd.* v. *Smith* (1922), 59 S. L. R. 517; 8 Tax C. 296, decided (like the following cases) under the Act of 1919, s. 18, now repealed by s. 15 of the Act of 1937.

[85] *Ellerker* v. *Union Cold Storage Co., Ltd.* (1938), 22 Tax C. 195.

[86] *I. R.* v. *Leith Harbour Commrs.*, 1942 S. C. 101.

[87] *Cadbury Bros., Ltd.* v. *Sinclair*, [1934] 2 K. B. 389.

[88] Act of 1941, s. 19, amended by Income Tax Act, 1945, Part VII, see p. 135; these provisions apply also to machinery and plant, see p. 135.

[89] Sched. D, Cases I and II, r. 3 (d), as amended, see p. 473; this does not permit the deduction of a capital outlay on renewal or improvement: *Hyam* v. *I. R.*, 1929 S. C. 384, see p. 112; *Margrett* v. *Lowestoft Water Co.* (1935), 19 Tax C. 481, see p. 110. As to the account year, see p. 142.

[90] War Damage Act, 1943, s. 113, see p. 116, where the prohibitions against deducting premiums, etc. are also indicated. [90a] See Chap. 7.

[91] *Lochgelly Iron and Coal Co., Ltd* v. *Crawford*, 1913 S. C. 810, *per* Lord DUNEDIN, L.P., at 814; 6 Tax C. 267; cf. *Ward* v. *Commissioners of Taxes*, see p. 117, note [99]; *Adam Steamship Co., Ltd.* v. *Matheson*, 1921 S. C. 141; 12 Tax C. 399 (excess profits duty).

The question whether the expenditure is an outlay to earn profit or an application of profit earned is one of fact.[91]

Where a trade association devotes the whole of the subscriptions received to paying its members an indemnity on any deficiency of output, due to strikes or other causes, the subscriptions represent an application of profit earned, and are laid out not for the purposes of the trade, but to provide for a contingency in which the trade cannot be worked; such subscriptions are not deductible.[92] On the other hand, where a pooling association for fixing prices, preventing competition amongst its members, and thus increasing their profits, receives subscriptions from them, and returns certain sums to those members who receive less than their agreed share of the total orders received by all the members, the excess of any member's subscriptions over his receipts from the association is a proper deduction.[93] But the accounts of such an association may have to be analysed so as to show how the money is actually spent;[94] and if it makes payments for the purpose of closing down, or acquiring control, of a business, these are capital payments, and a member cannot deduct his proportion in his own trading account.[95] A company which is a member of an association for mutual insurance against claims to compensation for fatal accidents to workmen is entitled to deduct the amount of calls paid to the association.[96]

That part of a subscription to an association which covers its contribution to the expenses of a Conciliation Board may be deducted; not so the part covering its subscriptions to the Mining Association of Great Britain, nor the part expended in experiments on the explosive properties of coal dust conducted at the request of the Home Secretary.[97]

Contributions to redundancy schemes certified by the Board of Trade are deductible in computing the profits of a trade, if paid wholly and exclusively for the purpose of the trade by the person who carries it on, and in so far as they are paid in furtherance of the primary purposes of the scheme.[98] The Board of Trade must certify a scheme, if satisfied that the conditions laid down in the section are fulfilled.[99]

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[91] *Grahamston Iron Co.* v. *Crawford*, 1915 S. C. 536; 7 Tax C. 25; *per* Lord JOHNSTON, at 29, citing *Moore* v. *Stewarts and Lloyds, Ltd.* (1936), 8 F. 1129; 6 Tax C. 501, *per* Lord DUNEDIN, at 507.

[92] *Rhymney Iron Co., Ltd.* v. *Fowler*, [1896] 2 Q. B. 79, *Thomas Merthyr Colliery, Ltd.* v. *Davies*, [1933] 1 K. B. 349.

[93] *Guest, Keen and Nettlefolds, Ltd.* v. *Fowler*, [1910] 1 K. B. 713.

[94] *Grahamston Iron Co.* v. *Crawford*, above; see, however, *C. Clifford, Ltd.* v. *Puttick* (1928), 14 Tax C. 189.

[95] *Collins* v. *Adamson*, [1938] 1 K. B. 477.

[96] *Thomas* v. *R. Evans & Co., Ltd.*, [1927] 1 K. B. 33.

[97] *Lochgelly Iron, etc. Co.* v. *Crawford*, note [91].

[98] Act of 1935, s. 25 (1), see p. 576. Sub-s. 9 excludes certain kinds of payments from being treated as contributions. Repayments are assessable under sub-ss. 4, 5; see sub-s. 6, as to carrying forward losses, p. 577. See Supplement.

[99] Sub.ss. 2, 3.

Again, where an arrangement has been made with a view to the concentration of industry or business, and in pursuance of it a sum becomes payable by a party to the arrangement to a person who ceases to carry on all or any of the activities of his trade, or undertakes new activities, that sum is to be deducted by the payer, and brought in by the payee, in computing the profits of their respective trades; but the sum must not be a capital payment nor one from which income tax has been deducted.[1] This provision applies only where the arrangement has been certified by a Government Department;[2] and it applies although the payment is not made to the actual person above described, but to his successor.[3]

Excess Profits Tax, etc.—The national defence contribution payable may be deducted as a trading expense in computing profits for income tax for the same period for which the contribution is payable, and any income tax overpaid in consequence is to be repaid.[4] A similar deduction is to be made as regards excess profits tax, but there is here no provision as to income tax overpaid.[5] If repayment of excess profits tax is obtained, owing to a deficiency of profits, the amount repayable is to be added in computing the profits for income tax for the period in which the deficiency occurs.[6]

Dominion and Foreign Income Tax—The payment of Dominion income tax does not give rise to any deduction in estimating income for the purposes of the United Kingdom tax; on the contrary, an addition is to be made in respect of any Dominion income tax paid or payable.[7] Accordingly, if a person or company carrying on business in this country is liable to Dominion tax, the gross income on which that tax is payable is to be brought into account, even though in fact that person or company receives only a net income after deduction of Dominion tax.[8] Though there is no special provision as regards foreign income tax, it seems doubtful whether this is a "proper debit item" which can be deducted in computing the profits of a trade or profession, which is carried on in the United Kingdom.[9]

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[1] Act of 1941, s. 18 (3), read with sub-s. 2, see p. 656; see also p. 147. As to capital payments, see p. 109, and as to deduction of tax in making payments, see Chap. 8, pp. 185 *sqq*. Note that s. 18 (3) applies to payments from which tax has not in fact been deducted, although there is a right to deduct which has not been exercised. The section applies to partnerships, as well as to individuals and companies: sub-s. 5.

[2] S. 18 (1); Act of 1942, s. 32, see p. 667; the Treasury must now concur. See Supplement.

[3] Act of 1941, s. 18 (3).

[4] Act of 1937, s. 25, see p. 595.

[5] No. 2 Act of 1939, s. 18, see p. 634; but as to groups of companies, see Act of 1940, 5th Sched., art. 9, p. 643. For tax on post-war refunds, see Supplement.

[6] S. 18, proviso: relief in respect of deficiency is provided by s. 15.

[7] Finance Act, 1920, s. 27 (4); see p. 19, for the relief from tax given in cases of this kind.

[8] The principle applicable is that laid down in *Ashton Gas Co.* v. *Att.-Gen.*, and *Samuel* v. *I. R.*, see p. 263.

[9] See p. 99; and contrast p. 227, note [7a].

Depreciation of Machinery and Plant—The general rule that no allowance for diminished value of assets can be made in ascertaining profits has already been stated.[10] An exception to this rule is made in respect of machinery and plant used for the purposes of the trade;[11] allowances are made both for diminished value by reason of wear and tear,[12] and for expenses incurred in replacing what is obsolete.[13] Under the Income Tax Act, 1945, an allowance for expenditure on provision of machinery and plant will be available, and the allowances for depreciation amplified.[14]

The following matters have been decided or admitted to be "plant" used for the purposes of the trade within these provisions: ships,[15] a hulk used for coaling ships,[16] railway locomotives, carriages, wagons and tools,[17] and tramway rails.[18] On the other hand, a stallion which serves mares for payment is not plant, and the loss of value due to its age is not loss by reason of wear and tear, within these provisions.[19] The bed of a harbour,[20] a ferro-concrete water-tower[21] and law books,[22] are not "plant."

The allowance for diminution of value due to wear and tear is made in favour of the person carrying on the trade, if the machinery or plant belongs to him;[23] or if it is let to him on the terms of his being bound to maintain it and deliver it over in good condition, and the burden of the wear and tear falls directly upon him.[24] Such a lessee's right does not depend upon his having incurred any capital expenditure.[25] The claim must be made in the annual return of profits.[26]

Where on the other hand the machinery or plant is let on such terms that the burden of maintaining and restoring it falls on the lessor, the lessee gets no allowance; but the lessor may claim repayment if tax has been deducted against him

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[10] See pp. 110—114. Actual expenditure on the supply or repair of articles used for the trade is deductible: Sched. D, Cases I and II, r. 3 (d), p. 473.
[11] See *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725.
[12] Sched. D, Cases I and II, r. 6, see p. 443, re-enacting Customs, etc. Act, 1878 (41 & 42 Vict. c. 15), s. 12. See also Act of 1933, s. 31 (5) (b), p 569.
[13] R. 7. Rr. 6 and 7 are applied to professions, etc., and to the occupation of lands including woodlands, when assessed under Sched. D, by Act of 1925, s. 16, see p. 493. The operation of this rule will be restricted from April 6, 1946; see p. 166.
[14] See Chap. 7.
[15] See the cases cited pp. 132—134.
[16] *John Hall, Junr. & Co.* v. *Rickman*, [1906] 1 K. B. 311.
[17] *Caledonian Ry.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487, see p. 132.
[18] *London County Council* v. *Edwards* (1909), 5 Tax C. 383, see p. 132.
[19] *Derby (Earl)* v. *Aylmer*, [1915] 3 K. B. 374; see *Derby (Earl)* v. *Bassom* (1926), 42 T. L. R. 380, p. 77.
[20] *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, see p. 141.
[21] *Margrett* v. *Lowestoft Water Co.* (1935), 19 Tax C. 481.
[22] *Daphne* v. *Shaw*, [1926] W. N. 27; 11 Tax C. 256.
[23] R. 6 (1), see p. 475
[24] R. 6 (2).
[25] *Union Cold Storage Co., Ltd.* v. *Simpson*, [1939] 2 K. B. 440 (C. A.), overruling *Heyhoe* v. *Slough Theatre, Ltd.* (1933), 17 Tax C. 488.
[26] R. 6 (4), see p. 475, and see Chap. 16.

on payment of the rent; the claim must be made within twelve months after the expiration of the year of assessment.[27]

The allowance due to obsolescence can be claimed only by a person who uses the machinery or plant for the purposes of his trade, and who has in fact replaced it.[28]

Method of Calculating Deduction for Wear and Tear—The deduction for wear and tear is to be "just and reasonable as representing the diminished value" (that is, the diminution of value) "by reason of wear and tear during the year"; the machinery or plant must of course be "used for the purposes of the trade"; the Commissioners are to fix the amount, subject to a reference to the Board of Referees if application is made on behalf of a considerable number of persons engaged in a class of trade.[29]

The Courts have been very loth to interfere with any decision of the Commissioners as to what is just and reasonable in a particular case. In connection with railway engines, carriages and wagons, actual expenditure on renewals (as well as on repairs) had been deducted; and the Commissioners refused any further allowance in respect of wear and tear; nor would they make any allowance in respect of engines or carriages which were not yet five years old, and had therefore required no repair or renewal, holding that they had to ascertain whether the plant had suffered any diminution in value as part of a going concern, and not a diminution in selling value; the Court declined to say that these refusals were wrong.[30] Where the method of allowing actual expenses of renewal had been applied for many years by agreement to the rails of a horse tramway, and the tramway was converted to an electric system, the Court declined to direct the Commissioners to change the method and to allow a percentage of the value of the horse rails which would have had to be replaced in future years if there had been no conversion.[31]

With regard to steamships, it has indeed been held in Scotland that the allowance must be equivalent to the actual diminution of value that has taken place in the year and must not be a mere sinking fund (calculated at so much per cent. on the value of the ships) to replace the ships at the end of their life.[32] But in England the Courts have held that the question is one of fact, and that the Commissioners could not be said to be wrong in

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[27] R. 6 (5), *ibid.*, this paragraph will not have effect after April 6, 1946, see p. 167.
[28] R. 7, see p. 476.
[29] R. 6 (1), (7), see pp. 475, 476. An additional deduction of 20 per cent. of that amount is allowed by Act of 1932, s. 16, as amended, p. 566; but see p. 166
[30] *Caledonian Ry.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487.
[31] *London County Council* v. *Edwards* (1909), 5 Tax C. 382.
[32] *Leith, Hull and Hamburg Packet Co.* v. *Musgrave* (1899), 1 F. 1117; 4 Tax C. 80; in the earlier case of *The Same* v. *Bain* (1897), 3 Tax C. 560, no decision was come to.

law whatever view they took upon it.[33] It appears, however, that the English Judges, if the question had been for them to decide, would have answered it in much the same way as the Scottish.

Generally speaking, then, the question what is a just and reasonable allowance as representing the diminished value of machinery or plant (including ships) by reason of wear and tear during the year is a question of fact, to be decided from a business point of view. It is doubtful (as indicated above) whether the law prevents this allowance from being calculated as a sinking fund is calculated; be that as it may, the actual depreciation in value that has taken place during the year must be allowed, and in most cases a sinking fund will not be an appropriate method of calculating the amount of that depreciation. The allowance is not intended to replace the owners of the machinery or plant in possession of capital invested in it, at the end of its life; but the probable life of the machinery or plant and its probable breaking-up value are relevant considerations in fixing the allowance.

The "diminished value during the year" is estimated with reference to the year of assessment itself, and is then allowed as a deduction in charging the profits computed according to the account year.[34]

The aggregate of the allowances made to the person by whom the trade is carried on, must not exceed the actual cost[35] of the machinery or plant to that person, including any capital expenditure by way of renewal, improvement or reinstatement.[36] It will be observed that this rule refers only to the period during which a particular person (which includes, of course, a company or other corporation) has carried on the trade; if a business, therefore, has been bought as a going concern, it is the price then paid for the machinery or plant which regulates the total of the allowances, and not its prime cost.[36] The rule leaves the question open whether the machinery or plant for which allowances are claimed is to be treated as a whole, or in separate items; and it may be appropriate to treat, say, each ship owned by a shipping company as a separate matter, and to deal as a whole with, say, the machinery and plant in an engineering workshop.

The rule does not take account of any breaking-up value; and therefore it is the whole cost to the trader that regulates the total of the allowances.

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[33] *Peninsular and Oriental S. N. Co.* v. *Leslie* (1900), 4 Tax C. 177; *British India S. N Co.* v. *Leslie, ibid.* 257.

[34] R. 6 (1), p. 475. As to the year of computation, see pp. 142—145.

[35] Including a grant in aid: *Birmingham Corporation* v. *Barnes*, [1935] A. C. 292.

[36] Sched. D, Cases I and II, r. 6 (6), see p. 476. See *Union Cold Storage Co., Ltd.* v. *Simpson*, p. 131. Expenditure on or after April 6, 1944, on incidental alterations to an existing building is to be included: Income Tax Act, 1945, s. 21, p. 711.

Where the profits in any year are not sufficient for full effect to be given to the allowances for depreciation by wear and tear, the allowance or the balance of it may be carried over to the next year.[37] But the allowance cannot be thus carried forward upon a succession by one company to another,[38] or indeed, it would seem, upon a succession of any kind. A change in partnership, however, does not appear to prevent the allowance being carried forward, except where the business is treated as being discontinued.[39]

If a person (including a partnership) has ceased to carry on all or any of the activities of his trade in pursuance of an arrangement certified by the Board of Trade for the concentration of industry or business, and any of his machinery or plant accordingly remains unused, any deduction for its wear and tear is to be computed as if it were in normal use.[40]

Calculation of Allowance for Obsolescence—The allowance in respect of any plant or machinery that has become obsolete is deductible as part of the expenses of the account year.[41] Moreover, it differs from the allowance for wear and tear in being an allowance for actual expenditure and not an estimate; the deduction can only be made where the plant or machinery has been in fact replaced during the year and must not exceed the amount expended in so replacing it. Subject to this, the deduction is regulated by the actual cost of the plant or machinery which has been replaced, less any sum actually realised by its sale, and reduced by the total amount of the allowances made on account of the wear and tear of that plant or machinery. Where these allowances have been made in a lump sum for an aggregate of plant or machinery, it may sometimes be difficult to attribute a definite amount to the particular item that has been replaced. But where, as in the case of ships, the allowances have been kept separate, and the total of the allowances on one item together with the sum realised by its sale shows an excess over its actual cost, that excess is not to be set off against the deficiency shown on another item so as to reduce the allowance in respect of the latter. [42]

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[37] R. 6 (3), see p. 475. As to carrying forward in connection with diminution of an individual's or partnership's income due to the war, see No. 2 Act of 1939, s. 11 (4), p 633.

[38] *United Steel Cos., Ltd.* v. *Cullington* (No. 1), [1940] A. C. 812, as to succession, see p. 147.

[39] *Scottish Shire Line, Ltd.* v. *Lethem*, 1912 S. C. 1108; 6 Tax C. 91, appears still to be applicable in cases governed by r. 11 (1) (see p. 148), but not where notice has been given under the proviso: cf. *Batty* v. *Schroder, ibid.*

[40] Act of 1941, s. 18 (4), with sub-ss. 2, 5, p. 656; see further, p. 146; on its language, sub-s. 4 applies also where the person is undertaking new activities, but it can hardly have any practical effect unless there is also a cessation.

[41] R. 7, see p. 476. The operation of this rule will be much restricted by the Income Tax Act, 1945, see Chap. 7.

[42] *Charente S.S. Co.* v. *Wilmot*, [1942 1 All E. R. 85 (C. A.).

A piece of plant or machinery may be "obsolete" if discarded by the trader in question, though others might still use it.[43]

Exceptional Depreciation connected with the War—If machinery or plant or buildings have been provided in 1937 or later for the purposes of a trade by the person carrying it on at the time, and owing wholly or mainly to consequences of the war their value (ascertained as if they were in a proper state of repair) is less than their net cost,—or they have before a certain date and for a similar cause been sold for less than their net cost,—extra allowance will be obtainable.[44] This allowance is admissible only if the deficiency, just described, is greater than the aggregate of the deductions already allowed for wear and tear of machinery and plant or depreciation of buildings[45] and of allowances under the Income Tax Act, 1945; any payments made to the claimant under the War Damage Acts, 1941 and 1943, other than payments in respect of damage already made good before the material date or before the sale which took place previously, as the case may be, are added to the aggregate only if the buildings, etc. have been sold or ceased to exist before that date. The total allowance will be equal to the excess of the deficiency over that aggregate; it is to be allowed in charging the profits of the trade for 1939—40 and subsequent years according to the proportion of the excess properly attributable to each year. The date upon which the above provisions depend for their application is to be fixed later;[44] but in the meantime the Commissioners of Inland Revenue may make provisional allowances, which are to be adjusted when the material date occurs, or the (previous) sale takes place, and there is a direction to spread them evenly;[46] the necessary repayments of tax or additional assessments may be made.[47] "Net cost" means the capital cost of providing the machinery or plant or buildings incurred by the person carrying on the trade at the time when they were provided, and excludes contributions, other than loans, by the Crown or any government or public or local authority or any other person; but it includes payments received under the War Damage Acts.[48] An allowance under this section in respect of machinery or plant may be carried forward.[49] Provision is made for certain cases of sale of buildings, machinery or plant

[43] *Per* ROWLATT, J., in *South Metropolitan Gas Co.* v. *Dadd* (1927), 13 Tax. C. 205 where the question was held to be one of fact, approved in *Charente S.S. Co.* v. *Wilmot* above.

[44] Act of 1941, s. 19 (1), read with sub-s. 4. Though this is not expressed as in s. 18 (5), "person" in s. 19 must surely include a partnership: see *City of London Commissioners* v. *Gibbs*, p. 235. This long section does not lend itself to compression, and the reader is referred to the text, p. 657. See also Income Tax Act, 1945, ss. 49, 50, pp. 726—727. As to appeal, see p. 396.

[45] See pp. 131, 126; the additional allowance referred to in note [29] on p. 132 is included.

[46] Sub-s. 2; Act of 1945, s. 51, p. 727.

[47] Act of 1941, s. 19 (6).

[48] Sub-s. 3.

[49] Sub-s. 5, see p. 658.

not in a proper state of repair;[50] also for sales between connected parties, and for sales designed to obtain tax allowances.[50a]

"Concerns" transferred from Schedule A—As has been seen,[51] the Act of 1926 transfers to Case I of Schedule D "quarries of stone, slate, limestone or chalk, mines of coal, tin, lead, copper, mundic, iron, and other mines," when carried on as mercantile undertakings, as well as "ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands."[52] "Concerns" of all the above kinds were formerly charged under No. III of Schedule A, but "according to the rules applicable to Schedule D, so far as the same are consistent with" No. III.[53] Many of the points decided with regard to these properties before the transfer are, therefore, still material; and the rules applicable to Case I now apply to the assessment of the transferred properties, subject to certain provisions brought over from Schedule A.[54] Accordingly, the earlier parts of this Chapter are intended to embrace "concerns" of these classes as well as other trades; for instance, the provisions for allowances in respect of depreciation and obsolescence are now clearly applicable;[55] but there are certain points which affect particularly all or some of these "concerns," and they will next be noted.

If any land (such as a general office) used or occupied in connection with the concern is separately assessed under the General Rule No. I,[56] its annual value must be deducted; and there is an allowance in respect of the depreciation of any mills, factories and similar premises, varying according as they are or are not separately assessed.[57]

Where a rent or royalty[58] is payable for any land not separately assessed, or for any easement,[59] and the land or

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[50] Income Tax Act, 1945, s. 49 (1), p. 728.

[50a] No. 2 Act of 1945, s. 58 (2), and Eighth Sched., Part II, pp. 801—802.

[51] P. 25; Act of 1926, s. 28, p. 529. A gravel pit is within the description: *Mosley* v. *Wimpey*, below; the question of the sandpit in *Russell* v. *Scott* [1944], N. I. L. R. 57, has been remitted by H. L., [1945] *ibid.* 767.

[52] No. III, r. 3, p. 455: the rule was exhaustively considered in the above cases.

[53] No. III, r. 8; the exact effect of this rule is, happily, now a question of the past.

[54] No. III, rr. 4, 7, see p. 455; see Act of 1926, Third Sched., p. 535.

[55] See p. 129. Such decisions as *Addie* v. *I. R.* (1875), 1 Tax C. 1; *Forder* v. *Handyside* (1876), 1 Ex. D. 233; and *Clayton* v. *Newcastle-under-Lyme Corporation* (1888), 2 Tax C. 416, are, therefore, no longer valid, except as regards depreciation of buildings.

[56] See "Business Premises," p. 125. [57] Act of 1937, s. 15 (2), (3), p. 594.

[58] Act of 1934, s. 21 (1), see p. 574. The word "rent" alone is used here, but by sub-s. 4 (c) it includes royalties and other kinds of payments. A payment for taking gravel by a grab is such a "rent". *Mosley* v. *Wimpey* (1945), 61 T. L. R. 411 (C. A.); *Stratford* v. *Mole* (1941), 165 L. T. 378. A right, not connected with a concern, to take shingle is not within s. 21: *Fife's (Duke) Trees.* v. *Wimpey*, 1943 S. C. 377.

[59] Including "any right, privilege or benefit in, over or derived from land": sub-s. 4 (a).

easement is used, occupied or enjoyed in connection with a "concern"—or is intended to be so used, occupied or enjoyed, and the rent or royalty is not subject to recoupment—the rent or royalty must not be deducted in arriving at the profits.[60] Tax is deductible in paying the rent or royalty; so far as the rent or royalty is paid out of the profits, the payer may retain the tax deducted; to the extent to which it is not so paid, he must make a return and is liable to be assessed.[61] It is submitted that similar conditions apply where the rent or royalty in the latter case *is* subject to recoupment.[62] But the above provisions do not apply where the rent or royalty is rendered in produce of the concern;[63] in this case there is nothing to prevent its deduction in arriving at the profits, and the charge is on the recipient.[64] A right to work minerals notwithstanding that the working may cause subsidence of, or withdrawal of support from, surface lands, or to work minerals and lower the surface, is an "easement," and an annual or half-yearly payment is a "rent" within section 21.[65] even if the payments are designated as "liquidated damages."[66]

A lessor of the right to work minerals who, by deduction or otherwise, pays tax on rent or royalties received may obtain repayment in respect of expenses of management or supervision disbursed in the year for which the tax is paid.[67]

The Income Tax Act, 1945, will apply to many concerns.[67a]

Deductions for Rates, Taxes, etc.—The amount of the income tax itself cannot be deducted;[68] but there seems to be no reason why tenant's rates and taxes in respect of the land occupied for the concern should not be deducted, even though they are payable by the landlord under agreement with the tenant, or because he is himself the occupier;[69] the same may be said of any composition for tithes[69] and unredeemed land tax, drainage rates and private expenditure on sea walls and embankments.[70] All these may be "proper debit items,"[71]

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[60] Sched. D, Cases I and II, r. 3 (m) (see p. 474), is imported by the reference to patent royalties in s. 21 (1).

[61] General rr. 19 and 21 are also imported: see Chap. 8, pp. 185 *sqq.*; as to carrying forward losses, see p. 153.

[62] Rr. 19 and 21 apply if *Hill* v. *Gregory* is no longer law: see p. 217. Where the rent or royalty is paid under a "long lease," s. 17 of the Act of 1940 places the matter beyond doubt. see p. 52

[63] Act of 1934, s. 21 (1), proviso; *I. R.* v. *Baillie* (1936), 15 A. T. C. 34.

[64] Under Case III of Sched. D: see Chap. 8.

[65] *I. R.* v. *New Sharlston Collieries, Ltd.*, [1937] 1 K. B. 583; *I. R.* v. *Hope*, [1937] S. C. 585. [66] *Fitzwilliam's Collieries, Ltd.* v. *Phillips*, [1943] A. C. 570.

[67] Act of 1922, s. 26, see p. 513; the war risk and other payments indicated at p. 114 are excluded in computing such expenses by Act of 1941, s. 17 (2) (c), and War Damage Act, 1943, s. 113 (c), see pp. 624 and 618. [67a] See Chap. 7.

[68] *Ashton Gas Co.* v. *Att.-Gen.*, [1906] A. C. 10, and the cases cited in connection with it, pp. 262 *sqq.*

[69] Cf. Sched. A, No. IV, r. 1 (a); and p. 127. As to Scotland, cf. Sched. A, No. V, r. 4, and *I. R.* v. *Scottish Central Electric Power Co.*, p. 127.

[70] Cf. Sched. A, No. V, r. 1 (e), (f), (g), p. 458. [71] See p. 99

although the rules of Schedule A cited in the notes are no longer specifically applicable. Rates and insurance premiums payable in respect of a generating station whose use has been given up may yet be deductible in computing the profits of an electrical concern.[72]

Mines and Quarries—Under Schedule A it was not permissible[73] to arrive at the profits of a mine (or a quarry) according to the method employed with regard to a trade in ordinary goods, by which the stock-in-trade is valued at the beginning of the year and again at the end, and the difference (as the case may be) debited or credited in the trading account before the balance is struck; in spite of the transfer to Schedule D, it is clear that this decision still holds good. Such a method would involve an allowance for the exhausted minerals: and there is no deduction for capital wastage, except as provided by the Income Tax Act, 1945.[74]

A special rule provides for the case of adventurers' mines.[75]

Municipal Undertakings—A municipal corporation is taxable under Case I of Schedule D in respect of many of its sources of revenue, whether on the net receipts of trading concerns[76] or on the net proceeds of market and other dues received under statute or charter. In calculating the profits it can deduct the expenses necessary to earn the particular receipts in question, but not those of general administration.[77]

In arriving at the profits derived from its gasworks (or its electrical undertaking), a local authority may not deduct the expenses incurred in lighting the streets,[78] or the deficit on another undertaking.[79] Where a local authority has arranged with the Joint Electricity Authority that the payments by the latter for electricity shall be such as to cover the local authority's amortisation charges, the whole of those payments are nevertheless included in the revenue receipts of the local authority's undertaking.[80]

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[72] *Reigate Corporation* v. *Cattermole*, [1940] 4 All E. R. 243; see note [80]

[73] *Colinese Iron Co.* v. *Black* (1881), 6 App. Cas. 315, see p. 110.

[74] See "Capital and Current Expenditure," p. 110; and Chap. 7, p. 167. The specific allowances for depreciation of machinery and plant are considered, p. 131.

[75] Sched. A, No. III, r. 7; cf. *Morant* v. *Wheal Grenville Mining Co.*, (1894), 3 Tax C. 298, p. 111.

[76] See "Public Undertakings" in Chap. 5, p. 74. Tramways and electric undertakings were not treated as coming within No. III of Sched. A; but since the transfer to Sched. D all the revenue-producing undertakings of a local authority appear to be assessable under Case I. A public health authority is not now liable to tax in respect of a sewer vested in it, even though it receives a payment from some other authority for the use of the sewer: Finance Act, 1921, s. 34, see p. 293.

[77] See p. 139.

[78] *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575, see p. 75.

[79] *Alloa Town Council* v. *I. R.*, 1931 S. C. 656; 16 Tax C. 451; but see p. 152.

[80] *Cattermole* v. *Reigate Corporation*, [1941] 2 All E. R. 765; 24 Tax C. 369 (C. A.), where several subsidiary points relating to electrical plant used as a stand-by were also decided.

The profits of a waterworks in the hands of a local authority do not include the proceeds of a compulsory rate, which is made on all the houses within the area of the authority's jurisdiction whether those houses take the water or not.[81] But in the more ordinary case where the liability to payment of the water rate (which is not here really a rate at all, but the price of water sold) or water rent depends on the exercise of an option to take the water, the payments received are taxable profits whether they are earned outside the authority's jurisdiction[82] or within it,[83] and whether the payment is for a domestic supply and calculated on rateable value[83] or for a non-domestic supply by meter.[83] And if the payment is in fact made by agreement, it is to be included in the profits, even though the payer may have a legal claim to receive the water without entering into an agreement.[84] A joint water board must include in its profits the proceeds of precepts levied on its constituent authorities; and may deduct as trade-expenses payments made to an authority of which it is a member, for the supply of water in bulk.[85]

Other Municipal Revenues : Markets—Coal dues given by a local Act to a municipal corporation and leviable on every chaldron of coals brought into the town are taxable in the hands of the corporation; although these dues were in fact paid into a common fund for the improvement of the town, the Courts rejected the contention that they were analogous to a local rate; their incidence was not in fact confined to the inhabitants of the town, and they were of the nature of harbour or market dues.[86]

A city corporation is taxable in respect of its receipts from markets, and cannot charge against them the general expenses of its establishment or of the civil government of the city; the receipts from each source of municipal revenue are to be kept separate and the expenses of earning them charged separately against the receipts from that source.[87] These observations apply equally to miscellaneous revenues, such as fines for renewals of leases, burgess fines, and so on.[88] Probably the loss on one municipal concern may now be set against the profit of another,[89]

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[81] *Glasgow Water Commrs.* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28, see p. 74.
[82] *Miller* v. *Glasgow Water Commrs.* (1886), 13 R. 489, 2 Tax C. 131, see p. 74; but see *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 546, 549, 555, p. 76.
[83] *Mullingar R. D. C.* v. *Rowles*, [1913] 2 Ir. R. 44, 6 Tax C. 85.
[84] *Allan* v. *Hamilton Waterworks Commrs.* (1887), 24 S. L. R. 360; 2 Tax C. 194.
[85] *Ostime* v. *Pontypridd and Rhondda Joint Board* (1944), 60 T. L. R. 552 (C. A.).
[86] *Att.-Gen.* v. *Black* (1871), L. R. 6 Ex. 78, 308, see pp. 74, 235.
[87] *Att.-Gen.* v. *Scott* (1873), 28 L. T. 302; *In re Birmingham Corporation* (1875), 1 Tax C. 26; *Adam* v. *Maughan* (1889), 27 S. L. R. 64, 2 Tax C. 541, see p. 29. The slaughter-house dealt with in the last-named case was afterwards held to be taxable under No. I of Sched. A, and not under No. III. *Harris* v. *Edinburgh Corporation* (see p. 29), and is, therefore, not within Case I of Sched. D.
[88] *Att.-Gen.* v. *Scott*, above; *Webber* v. *Glasgow Corporation* (1893), 30 S. L. R. 255; 3 Tax C. 202.
[89] See p. 152.

but that will not allow general expenses of administration to be set against the receipts of a revenue-bearing concern.[90]

Inland Navigations : Harbours and Docks—An inland navigation[91] may have other taxable receipts besides tolls; accordingly, the Humber Conservancy Board were held to be liable to bring into their accounts for tax purposes contributions payable to them under their local Act, by four railway companies and another navigation authority, each of which had an interest in the navigation of the Humber: the Conservancy Board were lessees of the bed of that estuary; these contributions were held not to be analogous to a rate.[92]

There is no specific mention of ports or harbours in No. III of Schedule A, though docks are mentioned; but in *Mersey Docks and Harbour Board* v. *Lucas*,[93] no distinction was made between rates and dues paid for the use of the docks or other hereditaments vested in the authority, and port or harbour rates or dues and so on, which are paid for the use of the port or the harbour and are unconnected with any corporeal hereditament. Such a distinction was not material to the point decided,[94] namely, that the Board were taxable on the profits derived from dues, although they were bound to apply to the repayment and extinction of loans and annuities any surplus arising therefrom after payment of expenses and of interest.[95] But since the decision in the case of the *Forth Conservancy Board*,[96] it is very doubtful whether port or harbour dues which are not earned upon soil vested in the dock authority can be brought into account for purposes of charge under Case I of Schedule D.

Certain grants from the Unemployment Grants Committee towards capital expenditure on the extension of a dock were held to be capital receipts, and were therefore not to be brought into account.[96]

The silting of a harbour does not give rise to an allowance for depreciation.[96] and the expenses of dredging a harbour

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[90] See, however, the cases decided on deduction of income tax in relation to municipal revenues, pp. 198 *sqq*.

[91] See p. 75; an inland navigation was not taxable under Sched. A, No. III, and is not taxable under Case I of Sched. D in respect of tolls if it does not own the land over which the tolls arise. *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213, see p. 76 But it may be taxable under Case VI: *Same* v. *Same*, [1931] A. C. 540, see p. 236.

[92] *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449, distinguishing *Glasgow Water Commrs.* v. *I. R.* (1875), 1 Tax C. 28, see p. 74. The contributions were held to be chargeable under No. III of Sched. A, or, in the alternative, under Case VI of Sched. D (see p. 210); they are now, therefore, taxable under Case I or Case VI.

[93] (1883), 8 App. Cas. 891 (see p. 75); followed in *Sowrey* v. *King's Lynn Harbour Commrs.* (1887), 2 Tax C. 201. Cf. also *Att.-Gen.* v. *Black* (1871), L. R. 6 Ex. 308, 310, 311, p. 235.

[94] *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213, *per* Lord BUCKMASTER, at 219. See note [92].

[95] *Seaham Harbour Dock Co.* v. *Crook* (1930), 48 T. L. R. 91, see p. 108.

[96] As to allowances for depreciation, see p. 131.

(which were admitted by the Crown for the purposes of the case to be deductible in ascertaining the profits as sums expended for "repairs") must be deducted against the profits of the particular year only in which they are incurred.[97]

Railways—Where a railway company (during the year on which the profits are calculated) runs a steamboat service under statutory powers, the railway and steamboat services form a single undertaking, the net profits of which are to be ascertained as a whole, and therefore any loss on the steamers is deductible against the profit earned on the railway lines.[98] It has been pointed out above that expenditure on improvements is inadmissible as a deduction, being a capital payment.[99] There is no objection to deducting the expense of renewing worn-out parts by parts of the same kind,[99] even though the expenditure is incurred upon renewals which have been left undone for some years;[1] but this practice may cause difficulty in securing a proper allowance for depreciation when larger replacements or renewals have to be made.[2]

A company which, under a working agreement, maintained a railway belonging to another company, worked the traffic upon it, and collected its revenues, half of which it paid to the owning company, while the owning company itself paid rates, taxes, interest, etc., has been held not to be "carrying on the concern," and not to be assessable separately in respect of that railway; the working company's receipts from this railway had been credited, and its outgoings in that respect debited, in its own accounts.[3]

Burial Grounds and Cemeteries—In arriving at the profits of a cemetery company, no deduction can be made in respect of capital lost by selling in perpetuity rights of burial.[4] It has been held in Scotland to follow from that decision that a cemetery company cannot deduct against the receipts from such

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[97] *Dumbarton Harbour Board* v. *Cox*, 1919 S. C. 162, 7 Tax C. 147 (see p. 130), Sched. D, Cases I and II, r. 3 (d), as amended (see p. 473), prevents the spreading out of the cost over any period of years, however reasonable this might appear to be in the case of repairs which are required only at longer intervals than a year. The cost of such repairs is not necessarily capital expenditure, but see *per* Lord STRATHCLYDE, L.P., in the case cited; and cf. *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267, p. 113.

[98] *Highland Ry.* v. *Special Commrs.* (1885), 13 R. 199, 2 Tax C. 151; the deduction for loss included both loss on working and loss by depreciation (see p. 111), and it was held to make no difference that the company did not carry on the steamer service in the year of assessment. The form of the special case is somewhat confusing, as it appears in the reports.

[99] *Highland Ry.* v. *Special Commrs.* (1889), 16 R. 950, 2 Tax C. 485, see p. 112.

[1] *Rhodesia Rails, Ltd.* v. *Bechuanaland Collector*, [1933] A. C. 368.

[2] *Caledonian Ry.* v. *Banks*, *London County Council* v. *Edwards*, see p. 132.

[3] *Caledonian Ry.* v. *Hassall* (1919), 56 S. L. R. 506, 7 Tax C. 440; in view of s. 18 of the Railways Act, 1921, this decision may still have some application.

[4] *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516, see p. 112.

sales during the year the expenses in perpetuity of keeping in order the grave-spaces concerned.[5]

The contrary has been held in England, and LUSH, J., said: "The true profit earned by the appellants is the profit that remains when they have discharged and met the expenditure they have undertaken to discharge and meet in consideration of the payments, and although . . . the sums received are income and not capital, yet it would be wrong to treat the whole of the moneys received as profit or money earned; but against the payments which the appellants receive ought to be set off the expenses they will incur in order to earn the money so paid."[6] It is submitted that, for the reasons given by LUSH, J., the English decision is correct.

Assessment on Profits of the Preceding Year—The method of calculating the profits of a trade, profession or vocation has now been considered. The question remains, for what year or period those profits are to be calculated. The year of assessment runs from April 6 to April 5.[7] In general (and apart from trades, etc., recently set up or commenced),[8] the profits charged are those of the "year preceding";[9] and the year preceding, of course, ends on April 5. But the account year of which the profits are to be taken as the basis of assessment is not, in the majority of cases, the year ending on that April 5. Where an account or accounts have been made up to a date or dates within the three years preceding[10]—*i.e.*, the three years ending on the day before the year of assessment begins—there are two possibilities: first, if one, and only one, account was made up to a date within the actual "year preceding," and if that account is for a period of a year which begins with the commencement of the trade, or which follows immediately on the period of the last account on which profits were computed for income tax, then the period of that account is to be the period on which the profits are to be computed.[11] But, secondly, if (though an account or accounts have been made up to dates within the three years preceding) there is no account answering exactly to the last description, then the Commissioners of Inland Revenue are to fix a period for the purpose of computing the profits; the period must end on a date within the "year preceding," that is, between April 6 and April 5 before the year of

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[5] *Paisley Cemetery Co.* v. *Reith* (1898), 25 R. 1080; 4 Tax C. 1.
[6] *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496. In neither case, although they contracted to keep the grave-spaces in order for all time, was there any obligation on the company to set aside the capital sums received for the purpose.
[7] See p. 4.
[8] See p. 144.
[9] Act of 1926, s. 29 (1), see p. 529; Act of 1927, s. 23, see p. 536.
[10] Act of 1926, s. 34 (1), see p. 533, as substituted by Act of 1930, s. 14.
[11] Act of 1926, s. 34 (1) (a).

assessment.[12] This provision (strangely enough) enables the revenue authorities in this large class of cases (including that of a company which makes up its accounts for successive six-monthly periods), to ignore the trader's own accounting practice, and to select at their discretion any period of twelve months, so long as it is continuous and ends in the "year preceding."

On the other hand, if no account has been made up to a date within the period of three years preceding, the profits of the year itself (extending from April 6 to April 5, the day before the year of assessment begins) must apparently be taken, and the Commissioners have no discretion.[13]

Any division or apportionment of profits or losses to specific periods, and any aggregation of profits or losses, may be made which is rendered necessary by these provisions for the purposes of Case I or Case II of Schedule D.[14]

In the case of farming, the above provisions are to apply although the charge of tax has been transferred from Schedule B to Schedule D, and the period for which the profits are to be computed falls wholly or partly within a year of assessment when the farmer was still chargeable under Schedule B, and was not obliged to render accounts.[15] All the farming carried on by a particular person or partnership (not charged under Schedule B) or by a particular company is treated as one trade.[16]

Retrospective Assessments and Repayments: Appeal—The discretion given to the Commissioners of Inland Revenue with regard to selecting twelve-monthly periods, to which reference has just been made, is followed by a provision[17] giving them power to make that selection retrospective by adopting a corresponding period for computing the tax of a year of assessment earlier than that to which their first selection applied, *e.g.*, if for the year of assessment 1945—46 they decide under section 34 (1) to compute the tax on the profits for twelve months ending September 30, 1944, they may afterwards direct that the tax for the year of assessment 1944—45 shall be computed on the profits for twelve months ending September 30, 1943. The assessment for 1944—45, if not yet made, will be made according to this direction; if an assessment has already

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[12] Sub-s. 1 (b). It is submitted that a decision of the Commissioners selecting the account period under this provision may be questioned in an ordinary appeal against an assessment based on the period thus selected; as to appeals, see Chap. 18.

[13] There appears to be nothing in such a case to affect the literal operation of s. 29 (1) of the Act of 1926.

[14] Act of 1926, s. 35, see p. 533.

[15] Act of 1941, s. 10 (4); as to the change from Sched. B, see pp. 55, 71. Provisions for relief in case the profits of an individual or partnership in 1941—42 or 1942—43 are less than the assessment arrived at according to the above rules are contained in Act of 1941, s. 10 (6) (see p. 621), Act of 1942, s. 28 (5). The claim must be made within twelve months from the end of either year.

[16] S. 10 (3), see p. 651.

[17] Act of 1926, s. 34 (2), see p. 533.

been made, and the result of the direction is that the taxpayer is liable to pay more tax for that year, an additional assessment is to be made;[18] if the result is that he has paid too much, repayment is to be made.

A specific right of appeal to the General or Special Commissioners—at the option of the taxpayer—is given against such an assessment or additional assessment, or against the refusal to make such a repayment or to make a sufficient repayment;[19] this appears to involve the power of appealing against a refusal of the Commissioners of Inland Revenue to give such directions under sub-section (2) as may be necessary to ensure the taxpayer getting the necessary repayment, so that he shall not have borne tax on the profits of overlapping periods.

Trades and Professions recently set up—Where a trade, etc., has been commenced in the year of assessment, the assessment will be upon the amount of the profits made in that year, or upon an average based—it would seem—upon the profits made in some part of the year, according as the Commissioners who make the assessment, or who determine an appeal against the assessment, direct.[20]

Where the trade has been commenced within the year preceding the year of assessment, the tax is in general to be charged on the profits or gains for one year from the date of the setting up or commencement,[21] although a year beginning on that date may overlap some part of the year of assessment.[22] But if the taxpayer gives notice, he is entitled to have his assessment for the second *and* the third year of assessment computed on the profits or gains of that year of assessment itself.[23] Notice in writing must be given to the inspector within two years after the end of the second year of assessment, that is, of the year next after that in which the trade was set up or commenced; and must apply to both the second and the third year of assessment, so as to have the assessment made on the profits of each of those actual years; the notice may be revoked within twelve months after the end of the third year, and both years will then be treated as if the notice had never been given.[24] If the assessment has already been made on the basis first stated, it

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[18] See p. 374.

[19] S. 34 (3), as to appeals, see Chap. 18.

[20] Act of 1918, Sched. D, Cases I and II, r. 1 (2), as amended (see p. 473), read with Case VI, r. 2, as amended by s. 29 (2) of the Act of 1926, see p. 481.

[21] Cases I and II, r. 1 (2), as amended.

[22] The decision to the contrary in *Clare and Heyworth* v. *Bells*, [1927] A. C. 443, is not applicable under r. 1 (2), as amended: *Manson* v. *Perry's (Ealing), Ltd.* (1931), 16 Tax C. 60

[23] Finance Act, 1930, s. 15, see p. 584. The terms used are defined in sub-s. 1.

[24] S. 15 (2), with proviso; see sub-s. 3 as to the giving of the notice where there has been a change in the persons engaged, of the kind mentioned in sub-s. 1 of r. 11, considered at p. 148.

will, of course, have to be amended or adjusted, and repayment made, if necessary.[25]

The application of these provisions does not depend on the actual period for which the accounts of the trade have been made up.[26]

Where the trade, etc., has been commenced within the period of two years before the year preceding the year of assessment (*i.e.*, in the year next but two, or next but one, before April 6 in the year of assessment) the amount of the assessment is in general to be taken as equivalent to the profits of the year next preceding the year of assessment;[27] subject, however, to the provisions which regulate the selection of the accounting period for computing the profits of the "year preceding."[28] A notice requiring assessment on the profits of the actual year may be given under section 15 of the Act of 1930 where the trade has been set up or commenced in the later of the two years just mentioned, for such a notice applies to "the third year of assessment."[29]

A change in ownership by the succession of a company to an individual or a partnership is treated as the setting up or commencing of a trade, whether, after the change, the business carried on is the same as before[30] or is in fact different.[31] A company which owned one ship only, lost it, and afterwards bought another out of the proceeds of the insurance, was held to have carried on one trade from beginning to end, and not to have "set up or commenced" a trade when the second ship started on her first voyage, although this took place after an interval of six-and-a-half months from the loss of the first;[32] thus, where a company had for more than five years sought to obtain contracts for construction, but had failed to do so until new directors joined the board, and fresh capital was brought in, there was held to be no discontinuance, and no fresh setting-up, of a trade.[33] On the other hand, a company which had owned two cinemas and was building another, was found to have set up a trade when it sold the first two and opened the third;[34] and two individuals, one of whom had contracted for the processing of films and the other had sub-contracted with him for the technical work, were found to have set up a trade

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[25] S. 15 (5).
[26] S. 34 of the Act of 1926 (see p. 533) does not appear to be applicable, because it only provides what shall be taken to be the profits of the "year preceding."
[27] Act of 1927, s. 23 (see p. 539), which applies Act of 1926, s. 29 (1).
[28] Act of 1926, s. 34, see p. 143.
[29] See s. 15 (1), p. 554. [30] See r. 11 (2) of Cases I and II, p. 148.
[31] *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, see p. 147.
[32] *Merchiston Steamship Co., Ltd.* v. *Turner*, [1910] 2 K. B. 923; an assessment based on the accounts of the first ship only was held to be incorrect.
[33] *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663.
[34] *H. and G. Kinemas, Ltd.* v. *Cook* (1933), 18 Tax C. 116.

on going into partnership and combining their businesses;[35] both findings were upheld. After the sale of a business to a company, the execution by the company on behalf of the vendor of orders received before the sale may constitute a new trade carried on by the vendor;[36] so may the carrying through by the company on the vendor's behalf of outstanding hire-purchase agreements.[37]

A company, which was previously not carrying on a trade assessable under Case I because it was not "resident" in this country,[38] becomes liable to such an assessment if it transfers the head and seat of its direction to England; but in the year in which that transfer takes place, it is not "setting up and commencing" a trade for the purposes of Case I, if the business carried on is the same business as it was before the transfer.[39]

The undertaking of new activities (by a person or partnership already trading) in pursuance of an arrangement for the concentration of industry or business certified by the Board of Trade, is not to be treated as the setting up or commencement of a new trade.[40] Neither is the transfer from Schedule B to Schedule D in the case of farming.[41]

Discontinuance of Trade or Profession—Where in any year of assessment a trade, profession or vocation is permanently discontinued.[42] the tax for that year is in every case to be assessed on the profits or gains made in that year itself (from April 6) down to the date of discontinuance. The computation of the profits is to be made according to ordinary income tax principles, with the ordinary allowances for loss; but without reference to any period of account other than that just mentioned. If an assessment for the year has already been made in the ordinary way (without knowledge or regard of the discontinuance), it is to be corrected by additional assessment or repayment, as the case may be.[43]

Moreover, the assessment for the year of assessment preceding that in which the trade, etc., is discontinued will be re-opened[44] if it is found that the profits of the preceding year were more than those on which the assessment for that preceding year was made according to the method above described.[45] In such a case an additional assessment may be made for the preceding

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[35] *Humphries & Co.* v. *Cook* (1934), 19 Tax C. 121.
[36] *Southern* v. *Cohen's Exors.* (1940). 23 Tax C. 566; the vendor's receipts from these orders were income receipts.
[37] *Batty* v. *Parker* (1941), 23 Tax C. 739.
[38] See pp. 79 *sqq*
[39] *Fry* v. *Burma Corporation, Ltd.*, [1930] A. C. 321.
[40] Act of 1941, s. 18 (2); see p. 130.
[41] S. 10 (4), see p. 72.
[42] Appointment as a King's Counsel does not effect the discontinuance of a barrister's profession: *Seldon* v. *Croom-Johnson*, [1932] 1 K. B. 759.
[43] Act of 1926, s. 31 (1) (a), see p. 53. As to allowances for loss, see pp. 151—154.
[44] Act of 1926, s. 31 (1) (b).
[45] See pp. 142—146

year[46] so as to bring the amount on which the tax is charged up to the profits of that actual year (April 6 to April 5). But here again, the taxpayer is to have the benefit of any allowance for loss due to him for that preceding year.[47] The provisions with regard to account periods contained in section 34, and considered above, do not apply in ascertaining the profits of the actual year.[48]

It may be noted that there is no corresponding relief given to the taxpayer in the case where the tax for the year of assessment preceding that in which the trade, etc., has been discontinued has been calculated on an amount *greater* than the profits of that year.

The sale of a business by a firm to a company was held not to be a discontinuance, where the same business was carried on after transfer;[49] even where the company attempted to obtain contracts for work similar to that done by the firm, but failed to do so;[50] but the matter is now dealt with by rule 11.[51] The trade of a credit-draper who sold his rounds but retained the property in the book debts until the purchase price should be paid in full, was held not to have been discontinued, pending such payment.[52] A particular portion of a trade may be given up (as where a railway company ceases to run steamers of its own), but it does not necessarily follow that the trade has itself been discontinued.[53]

The ceasing to carry on all or any of the activities of a trade in pursuance of an arrangement for the concentration of industry or business certified by the Board of Trade is not to be treated as a discontinuance of that trade.[54] And the fact that a farmer becomes chargeable under Schedule D instead of Schedule B is not to affect the question whether there has been a discontinuance.[55]

Succession to Trade or Profession : Change in Partnership— If a change occurs in a partnership (by retirement, death or dissolution of partnership, or by admission of a new partner), which does not involve the disappearance of all the old partners, or if a person who previously carried on the trade, etc., on his

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[46] But only upon the person or firm originally assessed in that year, and not upon a new partnership: *Osler* v. *Hall & Co.* (1932), 17 Tax C. 68.

[47] See p. 151. [48] *Wesley* v. *Manson*, [1932] A. C. 635.

[49] *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, see p. 271. Cf. *Ryhope Coal Co.* v. *Foyer*, p. 150. It is often a question of fact whether the business carried on after the transfer is the same business or not: *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, (see p. 145), but the question may be treated as one of law: *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663; and see *Bell* v. *National Provincial Bank*, p. 150 See also *Southern* v. *Cohen's Exors.* and *Batty* v. *Parker*, p. 146.

[50] *Kirk and Randall, Ltd.* v. *Dunn*, (1924), 8 Tax C. 663. [51] See below.

[52] *Bonner* v. *Frood* (1934), 18 Tax C. 486.

[53] See *Highland Ry. Co.* v. *Special Commrs.* (1885), 2 Tax C. 151, p. 141, and *Stockham* v. *Wallasey U. D. C.*, p. 150. [54] Act of 1941, s. 18 (2), see p. 130.

[55] S. 10 (4), see p. 72; this does not seem likely to arise frequently.

own account takes in a partner or partners, the assessment is, in general, to be made as if no such change had taken place.[56] But if notice is given for the purpose, the taxpayer may have the case treated as if the old trade, etc., had been discontinued, and a new one had been set up or commenced at the date of the change. The notice must be signed by all the outgoing and incoming partners, or, if any has died, by his legal representatives and must (if the change occurs after April 5, 1930) be sent to the surveyor within twelve months after the change took place. Such a notice will apply to all the years of assessment affected; and the partners who carried on the trade, etc., before the change (including the legal representatives of any deceased) and those who carry it on after the change, will be respectively liable for the tax assessed in respect of the periods before, and after, the change.[57] Where such a notice is given, losses cannot be carried forward,[58] nor, it would seem, can an allowance for wear and tear.[59]

On the other hand, where there is a succession by one individual to another,[60] by one partnership to another, by a partnership to an individual, or by an individual to a partnership, so that no individual who was carrying on the trade, etc., before the change, continues to do so after the change; and again, where a company succeeds an individual or partnership (or *vice versâ*), or one company succeeds another, the change will be treated as a discontinuance and a fresh commencement,[61] with the same results with regard to assessment and charge as where a notice is given under the proviso to sub-rule (1).[62]

Under the substituted rule 11, therefore, the trade, etc., is to be treated as continuous only where the personnel of the owners is to some extent the same; and even where this is so, the old and the new owners may, by giving notice under the proviso to sub-rule (1), unite to secure a break in the computation: there is no necessity to prove any falling-off in the profits or to attribute it to a specific cause.[63] Where there is a change

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[56] Sched. D, Cases I and II, sub-r. 1 of r. 11 (see p. 477), as substituted by Act of 1926, s. 32 (1).

[57] Sub-r. 1, proviso, as amended by Finance Act, 1930, s. 16, see p. 477; as to the effect of discontinuance, and of setting up a new trade, see pp. 144, 146.

[58] Under s. 33 of the Act of 1926, see p. 154. *Batty* v. *Schröder*, [1939] 2 K. B. 495.

[59] See *United Steel Cos., Ltd.* v. *Cullington* (No. 1), below.

[60] As in the ordinary case of the sale of a doctor's practice, although there is a short period during which the vendor remains in practice with the purchaser, to introduce him to the patients: *Pratt* v. *Strick* (1932), 17 Tax C. 459.

[61] Sched. D, Cases I and II, r. 11, sub-r. 2; see pp. 477 and 145. "Person" in sub-r. 2 is expressly stated to include a "partnership," and the word, of course, includes a company or other corporation: see pp. 260, 264. As to losses in certain cases of succession to an individual or firm by a company, see Act of 1927, s. 29, p. 154.

[62] A wear and tear allowance cannot be carried forward: *United Steel Cos., Ltd.* v. *Cullington* (No. 1), [1940] A. C. 812, see p. 134; nor can a loss (cf. *Batty* v. *Schröder*, note [57]) apart from s. 29 of the Act of 1927: see last note. And see Chap. 7, p. 166.

[63] As to claiming assessment on profits of the actual year, in cases where a change such as is mentioned in sub-r. 1 takes place in the ownership of a trade set up or

of partnership and no such notice has been given, an assessment already made is to be adjusted, so that the members of the old and the new partnership may each bear their respective shares;[64] where such a notice has been given, or where there is a succession within sub-rule (2), the liability, as has been seen, is distributed, and is imposed on the outgoing and incoming owners respectively.

The date on which an agreement of partnership or dissolution is entered into may be in fact the date of the change of partnership or of the succession, although the agreement declares that it shall have effect as from an earlier date.[65] In a case where the terms of sale of the trade had been arranged, but remained to be embodied in a formal contract, it was held that there had been no succession until a binding contract was made.[66]

The question whether a succession has taken place within the meaning of rule 11 (2) may be one of pure fact; and the Scottish Court refused to review the decision of Commissioners, where they had found that a company carrying on the business of distilling and blending whisky, which had acquired the business of an older firm including a distillery that was not working, and had recommenced the working of the distillery, was not carrying on a business identical with that of the older firm, and that therefore there had been no succession;[67] and again, where the Commissioners came to the conclusion that there had been a succession to a joinery business by a firm of saw-millers, who had bought the premises and the goodwill of the joinery business, although it had ceased for lack of orders before the purchase.[68] On the other hand, a large banking company which had acquired the business of a local bank and made it a branch of its own wide-spreading business was held, by the English Court, as a matter of law to have succeeded to the business of the local bank, and to be bound to include the profits of the local bank in computing its own profits for the

commenced in recent years, see Act of 1930, s. 15 (3), p. 555. The effect of giving, and not giving, notice under the proviso to r. 11 (1) are exemplified in *Osler* v. *Hall* see p. 147.

[64] Sched. D, Cases I and II, r. 9 (see p. 476), has now no other application than that stated in the text: *City of London Commissioners* v. *Gibbs*, [1942] A. C. 402; see also Act of 1926, s. 35 (1), proviso, p. 534. The procedure is set in motion by the inspector of taxes within four months after the year of assessment in which the change took place. As to assessments on partnerships generally, see p. 264.

[65] *Faraday* v. *Carter* (1927), 11 Tax C. 565; *Waddington* v. *O'Callaghan* (1931), 16 Tax C. 187. As to the effect on income tax of indemnities given in connection with succession, etc., see *Adams* v. *Morgan & Co., Ltd.*, [1924] 1 K. B. 751; *United Kingdom Advertising Co., Ltd.* v. *Whiting* (1931), 47 T. L. R. 420.

[66] *Todd* v. *Jones Bros., Ltd.* (1930), 15 Tax C. 396.

[67] *A. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, see p. 147; *Fullwood Foundry Co.* v. *I. R.* (1924), 9 Tax C. 101; cf. the English case of *Wilson and Barlow* v. *Chibbett* (1929), 14 Tax C. 407. Contrast *Faraday* v. *Carter*, above. The cases cited arose under the old r. 11 or under the corresponding 4th rule of Cases I and II in the Act of 1842.

[68] *Thomson and Balfour* v. *Le Page*, 1924 S. C. 27.

material year;[69] but there was held to be no succession where a principal company had taken over factories previously owned by subsidiary companies, the produce being now sold by retail, instead of wholesale.[70] Where the works of subsidiary companies had been taken over without any change in the manner of ultimate sale, the Commissioners were held to have rightly decided that there had been a succession.[71] A company acquiring the business of a partnership and carrying it on succeeds to that business.[72] But the mere sale of a ship by one set of owners to another, unaccompanied by any transfer of debts, account books or lists of customers, does not make the purchasers succeed to the business of the sellers.[73] The Court (in England) refused to interfere with the decisions of Commissioners who found that a succession had taken place, where one brewery company had acquired the brewery and the tied houses of another, and carried on the tied houses, but had closed the brewery;[74] where, after a fire in an exhibition of waxworks which had consumed most of the wax figures but spared parts of the buildings and the stock, a new company purchased the remaining assets from the old company and formed and opened the exhibition again:[75] and where a company owning estates and growing rubber and other produce on them acquired another company's rubber estate as a going concern, though it did not take over the vendor's book debts or selling organisation; all the estates were in South India.[76]

There can be no succession to a part of a business; but if one person carries on two separate businesses, another person may succeed to one of those businesses, although he does not acquire the other.[77]

The appointment of a receiver for debenture-holders to carry on the trade of a company does not necessarily constitute a succession.[78]

Valuation of Stock on Discontinuance or Succession—On a discontinuance (except where this is due to the death of an

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[69] *Bell* v. *National Provincial Bank of England, Ltd.*, [1904] 1 K. B. 149.

[70] *Laycock* v. *Freeman, Hardy and Willis, Ltd.*, [1939] 2 K. B. 1, the case was decided as one of principle, but the C. A. reserved the question whether the Commissioners' finding of fact (which they upheld) was conclusive

[71] *Briton Ferry Steel Co., Ltd.* v. *Barry*, [1940] 1 K. B. 463 (C. A.).

[72] *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, see p. 147, *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663, see p. 147. Cf. *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, p. 147 A company which does not purchase the business, but only acquires some of the assets, may be in a different position: *Reynolds, Ltd.* v. *Ogston* (1930 15 Tax C. 515.

[73] *Watson Bros.* v. *Lothian* (1902), 4 F. 795; 4 Tax C. 441; as to single ship companies, see also *Farrell* v. *Sunderland Steamship Co., Ltd.* (1903), 4 Tax C. 605 (see p. 71), and *Merchiston Steamship Co., Ltd* v. *Turner*, [1910] 2 K. B. 923, see p. 145

[74] *Shipstone & Sons, Ltd.* v. *Morris* (1929), 14 Tax C. 413.

[75] *Wild* v. *Madame Tussauds* (1926), *Ltd* (1932), 17 Tax C. 127.

[76] *Malayalam Plantations, Ltd.* v. *Clark* (1935), 19 Tax C. 314.

[77] *Stockham* v *Wallasey U. D. C.* (1907), 71 J. P. 244, see p. 147.

[78] *I. R.* v. *Thompson*, [1937] 1 K. B. 290.

individual trading singly), or on a succession which is treated as a discontinuance,[79] if the trading stock is sold to another trader (whether he be a successor to the trade or not), or is transferred to him for valuable consideration, it must be brought in at the amount realised on the sale or at a value which is to be placed upon the consideration, as the case may be, to the profits of the discontinued trade.[80]

Such a consideration may often consist of shares and may be given for the transfer of other assets as well as trading stock such as works, plant, or goodwill: in these cases there must be, first, a valuation of the shares and, next, an allocation of part of the value so found to the trading stock.[80] The "amount realised on the sale" (by the vendor) must clearly be a net amount after deducting the expenses of sale; and so, it would seem, must "the value of the consideration," which, though "given for the transfer," proceeds to the transferor. Many different kinds of trade are concerned, for "trading stock" is defined in very wide terms,[81] and would include, for instance, lands belonging to a development company, or houses (even though incomplete) belonging to a builder: it includes finished and unfinished goods as well as materials for manufacture.

These provisions are only to apply if the purchaser (or transferee for value) is trading or intending to trade in the United Kingdom, and is entitled to deduct the cost of the stock as an expense of his own trade; where they do not apply the net market price of the stock at the discontinuance is to be taken as its value.[82]

Loss—Where a person sustains a loss in any trade or profession he may, if he has paid the tax, apply for an adjustment of his liability and obtain a certificate for repayment of the tax upon income equal to the amount of loss. The application must be made within one year after the year of assessment either to the General or Special Commissioners by notice in writing given to the inspector.[83] The trading as a whole must have resulted in a loss; repayment cannot be claimed because a loss was made on a particular transaction.[84] The loss in a

[79] Act of 1938, s. 26 (1), (3), see p. 603. As to successions so treated, see pp. 148—149. The exception in s. 26 (3) is ambiguous, but it would seem that the section is to apply where there is a succession to the trade of the deceased individual.

[80] S. 26 (1) (a). An appeal with regard to questions arising under this paragraph only is provided by sub-s. 2, see p. 347. As to such valuation and allocation, see *Osborne* v. *Steel Barrel Co Ltd.*, [1942] 1 All E. R. 634, p. 116.

[81] Sub-s. 4, which see.

[82] Sub-s. 1 (a), (b). It does not follow that the same amount will be debited to the purchaser as is credited to the vendor.

[83] Act of 1918, s. 34, as amended by Act of 1923, s. 30 (3), see p. 413. As to the procedure, see p. 392. The Commissioners' decision is final: *R.* v. *Swansea Commissioners, Ex p. English Crown Spelter Co., Ltd.*, [1925] 2 K. B. 250.

[84] *R.* v. *City of London Commissioners* (1904), 91 L. T. 94. A particular loss of that kind should be taken into account in arriving at the assessment in the first instance: see, *e.g.*, *Reid's Brewery Co.* v. *Male*, [1891] 2 Q. B. 1, p. 118.

trade is to be computed as profits are computed under Case I.[85] Where there is a capital redemption business,[86] the income derived from its investments is to be brought in so as to diminish the loss.

Loss in one Trade set off against Profit in another—Where a person[87] carries on (solely or in partnership) different trades in different places, a separate assessment is made in respect of each trade.[88] But if a loss is made in one trade, profession or vocation, it may be deducted or set off against the profits made in a distinct trade, profession or vocation.[89] The right to set off a loss depends upon both trades being carried on for commercial purposes and on commercial principles, and with a view to profit.[90] Thus, a municipal corporation cannot set off the expense of such services as the disposal of sewage, industrial schools, baths or parks against the profits derived from markets[91] or from trading undertakings, such as tramways or electric light. A society for the diffusion of religious literature cannot deduct from the profits of bookseller's shops the balance of expenses over receipts of a colportage agency, one of whose objects is to administer spiritual advice;[92] and a society for the improvement of young men cannot deduct from the profits of a restaurant a debit balance incurred in respect of educational classes, a gymnasium, or a publication department.[93] "Capital redemption business" is to be treated as a separate business.[93]

Any loss which it is desired to set off under this rule must have been incurred in a trade the profits of which are charged under Schedule D.[94] A commercial traveller was not allowed to deduct from his profits, as such, expenses incurred in regard to an invention which had no connection with the trade in which he was a traveller.[95]

A claim for a set-off of this kind must be made in connection with the assessment, by appeal or otherwise; it is not a matter

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[85] Act of 1937, s. 13, see p. 592. By provisos (a) and (b), life assurance business is excepted; and a dealer in securities may not bring in a loss sustained in a transaction such as is referred to in s. 12 (3) (see p. 120), whenever that transaction took place. S. 13 does not apply to a "profession, employment or vocation" (Case II).

[86] Act of 1938, s. 27, see p. 604; see also definition in sub-s. 3 and saving in sub-s. 4.

[87] Including "body of persons": General Rules, r. 1, see p. 487; s. 237, see p. 452.

[88] Sched. D, Cases I and II, r. 16, proviso, see p. 479. But as to farming, see p. 72

[89] R. 13, as amended by Act of 1941, s. 20, see p. 476; though the trades, etc. must be distinct, they need not be carried on at different places. The question whether two sets of operations form distinct trades has been considered pp. 76, 78; see also pp. 149, 150.

[90] *Religious Tract and Book Society* v. *Forbes* (1896), 23 R. 390; 3 Tax C. 415 (see p. 73), decided under s. 101 of the Act of 1842, the predecessor of r. 13.

[91] *In re Birmingham Corpn.* (1875), 1 Tax C. 26, see p. 139.

[92] *Grove* v. *Y. M. C. A.* (1903), 4 Tax C. 613; see p. 73.

[93] See note [85], above, as to calculation of loss.

[94] *Brown* v. *Watt* (1886), 23 S. L. R. 403; 2 Tax C. 143. As to relief or adjustment for loss in respect of a farm still charged under Sched. B, see p. 59.

[95] *Grimes* v. *Lethem* (1898), 3 Tax C. 622.

for subsequent application and adjustment as in cases of succession, etc.

There appears to be nothing now to prevent the allowance of a set-off as between two concerns formerly assessable under No. III of Schedule A, provided that both are carried on upon commercial principles with a view to profit.[96]

Losses Carried Forward—In addition to the above, there are provisions enabling a person who, in a trade, etc., has sustained a loss (computed as the profits are computed for income tax purposes), for which relief has not been wholly given under section 34 or rule 13,[97] or any other provision of the Acts, to claim that the balance of the loss shall be carried forward and deducted from the profits of that trade in the next year of assessment; if the loss cannot be wholly wiped off in the next year, then the balance is to be deducted in the year following, and so on up to the sixth year of assessment following that in which the loss was sustained.[98] This section does not enable antecedent losses on a different trade to be set off; the balance of the loss deductible in succeeding years can only be deducted against the profits of the same trade in which the loss is incurred.[99] A partner in a partnership is to set off his loss, or his share of the loss, against his portion of the profits computed according to the provisions which regulate his share for purposes of "total income," which is not necessarily the share of the profits actually drawn by him in any year.[1] A company which succeeds another cannot carry forward its losses,[2] neither can a new partnership where notice has been given to treat the business as discontinued.[3]

Annual payments, not wholly made out of profits or gains, which a person carrying on a trade has made under deduction of tax, and for which he is separately assessed,[4] may be carried forward as losses under section 33 of the Act of 1926, provided that the person assessed is not reimbursed for the annual payment, and that it is not "charged to capital."[5]

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[96] *Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328, does not appear to be applicable under the Acts now in force.

[97] In the Act of 1918, see pp. 151—153.

[98] Act of 1926, s. 33 (1), (3), see p. 532; see also, as to diminution of an individual's or partnership's income due to the war, No. 2 Act of 1939, s. 11 (4), p. 633. As to the method of calculation where the loss was incurred in the first year of a new business, see *I. R.* v. *Scott Adamson*, 1933 S. C. 23; 17 Tax C. 679. The six years are to be reckoned inclusive of the year of assessment for which, owing to the loss, there were no assessable profits: *Harling* v. *Celynen, etc. Institute*, [1940] 2 K. B. 465 (C. A.).

[99] S. 33 (1).

[1] S. 33 (2); as regards a partner's total income, see Chap. 14 and p. 301.

[2] *United Steel Cos., Ltd.* v. *Cullington* (No. 1), [1940] A. C. 812, p. 148.

[3] *Batty* v. *Schröder*, [1939] 2 K. B. 495, see p. 148.

[4] Under General Rule 21, as amended, see p. 196.

[5] Act of 1928, s. 19, see p 551. The phrase quoted is novel, and would seem to make a book entry conclusive; contrast p. 110, note [29]. S. 19 does not apply to copyright royalties dealt with by s. 25 of the Act of 1927: see p. 536.

Where, in the above cases, full relief cannot be given within the six years owing to allowances for wear and tear of machinery or plant, the loss may be carried forward without limit of time.[6]

The provisions of section 33 of the Act of 1926 are applied (with certain modifications) to cases where a business carried on by an individual or a partnership is transferred to a company in consideration solely or mainly of the allotment of shares; and the loss may be set off against income derived from the company by way of dividends from those shares or otherwise, as if that income were profits assessed under Schedule D.[7]

As regards farming, a farmer whose charge of tax for the year 1941—42 has been transferred to Schedule D by the Act of 1941 may under the above sections carry forward the balance of losses incurred in previous years to the same extent only as if he (and every partnership of which he is a member) had throughout been charged under Schedule D and had already had as much relief as could be given in those years.[8]

These provisions are extended so as to increase the number of years of the carry-forward by adding any of the years from 1939—40 to 1945—46 inclusive which have elapsed since the year in which the loss was sustained; but it must have been sustained during the period just named.[9]

Further, relief under section 33 is to be given by repayment (or otherwise) of tax which has been deducted against interest or dividends, if such interest or dividends would have been treated as trading receipts but for such deduction of tax.[10] There is a special proviso relating to the computation of loss in the cases of life assurance and capital redemption business.[11]

Registered Societies—It has already been seen that "mutual" trading companies and societies, including societies registered under the Industrial and Provident Societies Acts, are made liable for profits of mutual transactions; but that bonuses, rebates and so forth, returnable to members, and calculated by reference to the amounts, or the magnitude, of transactions with those members, are deductible as a trade expense.[12] In addition, such "registered societies" are allowed relief from tax in respect of "share interest," that is, any interest, dividend, bonus or other sum payable to a shareholder by reference to

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[6] Act of 1932, s. 19, see p. 567. As to wear and tear, see pp. 131-134. And see Chap. 7, p. 166.

[7] Act of 1927, s. 29, see p. 537; s. 19 of the Act of 1932 does not apply to these cases, see sub-s. 1, proviso (a).

[8] Act of 1941, s. 10 (5), see p. 652. A similar provision is enacted in s. 28 (4) of the Act of 1942 in favour of farmers whose charge of tax for the year 1942—43 has been transferred to Sched. D owing to the reduction of the annual value from £300 to £100 effected by sub-s. 1 of that section; see p. 606.

[9] No. 2 Act of 1945, s. 22 (1), see p. 780.

[10] Sub-s. (2); cf. pp. 94, 95, 120: as to appeal and case stated, see sub-s. (3).

[11] Sub-s. (2), proviso; see p. 121: p. 152, notes [85] [86], [93].

[12] Act of 1933, s. 31 (1), (3), see p. 568; and see p. 73.

his holding, and of "loan interest," that is, any interest payable by the society (whether to a member or other person) in respect of any mortgage, loan, loan stock or deposit; the interest need not have been actually paid in either case, but must have been credited to the person entitled.[13] Such interest is to be paid without deduction of tax:[14] the recipient will be liable to tax in respect of it if his total income is within the taxable limit.[15] Where the relief to the society cannot be wholly given in any year it may be carried forward, as in the case of the annual payments referred to on p. 153.[16]

The provisions of section 32 above summarised are inapplicable to any share interest or loan interest which is payable to a person whose usual place of abode is not within the United Kingdom;[17] in that case tax will be deducted and the society does not get relief.

The benefit of the machinery and plant allowances under the Income Tax Act, 1945, is secured to such a society by a special provision.[18]

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[13] S. 32 (4) (a), (7), see p. 570. This relief is not given in respect of loan interest which gives rise to any deduction or relief by virtue of any other provisions: sub-s. 4, proviso.

[14] Sub-s. 1.

[15] Sub-s. 2; see pp. 8 *sqq*. The society has to make returns for this purpose: sub-s. 6.

[16] Sub-sect. 4 (b); see notes [4], [5], [6].

[17] Sub-s. 1, proviso (a).

[18] S. 19, proviso, see p. 710.

CHAPTER 7

THE NEW ALLOWANCES.

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Post-war Changes: "Appointed Day"—The Finance Act, 1944, and the Income Tax Act, 1945,[1] provide for new allowances in the taxation of trades and professions, offices, agriculture and woodlands: and in certain cases for corresponding charges. These changes will (except a very few already in force) take effect from April 6, 1946, the date determined by Parliament for each of those Acts;[2] that date is called "the appointed day," and will be referred to frequently in this chapter. In most cases, however, expenditure incurred from a specified earlier date will be brought into account for allowances, though these will not be granted until after the appointed day.

The new allowances, which are mutually exclusive,[3] relate to expenditure on scientific research, industrial buildings and structures, machinery and plant, mines and minerals, agricultural buildings and works, and patents.

The agricultural and forestry buildings to which Part IV of the Act of 1945 applies must be situate in the United Kingdom;[4] but apart from these, and from certain buildings used for storage of sea- or air-borne goods, there appears to be nothing in that Act, or in the Finance Act, 1944, to prevent its application where the buildings, plant, mines and so on are situate abroad, or the expenditure is incurred abroad.

Again, although the annual allowance for capital expenditure on the purchase of patent rights (so far as trade is concerned)

[1] 7 & 8 Geo. 6, c. 23, Part IV; 8 & 9 Geo. 6, c. 32.
[2] Act of 1944, s. 31 (1); I. T. Act, 1945, s. 68 (1); No. 2 Act of 1945, s. 18, p. 779.
[3] See, *e.g.*, s. 13 (1), n. 24, n. 47.
[4] S. 34; see p. 170.

is limited to a trade carried on in the United Kingdom,[5] there appears to be nothing which limits in this way the trades, etc., for which the other allowances may be claimed or charges may be made: the deduction of patent expenses, even, is to apply in computing the profits of *any* trade.[6] It appears therefore that (with the exceptions noted above) the allowances and charges provided by these Acts are applicable where the trade, profession, employment, vocation or office, as the case may be, or the occupation of lands, is not carried on or situate in the United Kingdom, but is a foreign possession so that the profits, or such part of them as is brought to the United Kingdom, are chargeable under Case V.[7]

In this chapter, the phrase "account year" is used comprehensively to denote the basis period for which the profits are computed for income-tax purposes, this being in most cases a period of twelve months.[8]

Scientific Research —*The provisions for deduction of expenditure* on scientific research[9] related to or connected with a trade will apply whether the expenditure is of a revenue or a capital nature, but will operate differently. The research referred to includes scientific research which may lead to an extension of the trade carried on, or of trades of the same class, as well as medical research which has special reference to welfare in such trade or trades.[10] The meaning of the word "trade"[11] is not restricted: professions and offices are not included.

Expenditure not of a capital nature, on scientific research related to a trade and incurred by the trader or on his behalf, will be deductible as a trade expense in the account year;[12] and so will any sum paid to an approved association for scientific research related to that class of trade, as well as any sum to be used for such research which is paid to an approved university, college, research institute or similar institution.[13] The first account year in which the deduction can be made will be that in which April 6, 1946, falls:[13] but any expenditure incurred, and any sum paid, on or after April 6, 1944, may then be deducted, unless it was deductible on other grounds as a trade expense.[14]

Expenditure of a capital nature on the other hand is to be

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[5] S. 35 (1), proviso (a), s. 42 (1), pp. 719, 723, but the allowance applies also to persons taxable as owners of patents apart from any trade, see s. 35 (1), proviso (b), and p. 175.

[6] S. 39 (1), see also sub-s (2).

[7] See Chap. 9.

[8] S. 57 (1)—(3), see pp. 142—147, 730

[9] Act of 1944, Part IV, pp. 687—690; I. T. Act, 1945, Part VI, pp. 724—726.

[10] Act of 1944, s. 31 (1), p. 690, where scientific research is defined in wide terms.

[11] See Chap. 5.

[12] Pp. 142—146 *sqq.*

[13] S. 27, p. 687. The approving committee and councils are indicated in s. 31 (1); and their decisions on the questions indicated in sub-s (4) are to be final

[14] I. T. Act, 1945, s. 44, p. 724.

spread over five years, and one-fifth is to be deducted in each of the five relevant years of assessment from the amount at which the assessment for that year would otherwise be fixed.[16] Such expenditure must be on research related to the trade, and directly undertaken by the trader or on his behalf; and includes expenditure on research connected with a trade about to be set up. It includes expenditure incurred from January 1, 1937, onwards: but if it was incurred before April 6, 1946, and is represented by an asset which has then ceased to be used by the trader for such research, this expenditure will not be included; in any case, such of the various depreciation allowances as have been received must be deducted.[16] The five years of assessment in question will not commence before that beginning April 6, 1946. Apart from trades recently set up, the five years commence with the year of assessment which is based on the account year in which the expenditure was incurred;[17] on the other hand, if it is incurred before or during the year of assessment in which the trade was set up, the five years commence with that year; if it is incurred after the end of that year, but not later than twelve months from the setting up of the trade, the five years commence with the year of assessment next following that in which the trade was set up.[18] In all these cases, expenditure incurred between January 1, 1937, and April 6, 1946, is treated as having been incurred immediately after the latter day.[18]

Detailed provision is made for adjustments where an asset representing research expenditure of a capital nature (incurred after the appointed day, or if incurred on or before that day representing an asset which did not cease to be in such use on or before that day) ceases to be used by the trader for research relating to that trade, or is destroyed.[19] Where a deduction is allowed in respect of capital expenditure which is represented wholly or partly by any assets, no allowance is to be made, for any year of assessment in which these are used for research related to that trade, under the various provisions for depreciation: but this prohibition does not apply to any year of assessment before that beginning April 6, 1946.[20] Deductions for research expenditure of a capital nature and for losses may be carried forward as in the case of deductions for wear and tear.[21]

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[16] Act of 1944, s. 28 (1), cf. r. 6 of Cases I and II of Sched D, as contrasted with r. 7: pp. 687, 475—476.
[16] I. T. Act, 1945, s. 45, p. 725.
[17] Act of 1944, s. 28 (4); see proviso as to overlapping, "basis years," and as to discontinuance of the trade. And see pp. 142, 196.
[18] S. 28 (2), (3); as to trades recently set up, see pp. 144—146.
[19] S. 29 (1), (2), (3), as amended by I. T. Act, 1945, s. 46, pp. 688, 725.
[20] S. 29 (4), as so amended; see pp. 131—136.
[21] S. 30, p. 689.

Expenditure met directly or indirectly by the Crown or any Government or public or local authority or by any person other than the trader is excluded from these provisions;[22] and so is expenditure on the acquisition of rights.[23] The same expenditure is not to be taken into account in relation to more than one trade.[24]

Where an allowance in respect of capital expenditure for scientific research is available, no allowance for buildings and structures, and no initial allowance for machinery and plant, is admissible in respect of the same expenditure under the Income Tax Act, 1945.[25]

Industrial Buildings and Structures—The allowances granted by the Income Tax Act, 1945, for expenditure on the construction of buildings and structures do not extend to those used for all trades, but only to those which are in use for a trade carried on in a mill, factory or similar premises;[26] for a transport, dock, inland navigation, water, electricity or hydraulic power undertaking [27] for a manufacturing or processing trade; for a trade which consists in storage of goods or materials for manufacturing or processing, of manufactured, produced or processed goods or materials before delivery to a purchaser, or of goods or materials on arrival by sea or air in any part of the United Kingdom;[28] for a trade which consists in the working of a mine, oil well or other mineral deposits, or of a foreign plantation; or for the trade of a contractor for cultivating, threshing or other agricultural operations.[29] Welfare buildings and structures for the above trades and undertakings are specifically included; but dwelling-houses, and the whole of any buildings or structures used as such are excluded, unless these were constructed for the occupation or welfare of employees at or in connection with the working of mines, oil wells or other mineral deposits, or on foreign plantations, and are likely to have little or no value when the mines, etc., are no longer worked, or when the "foreign concession" concerned has ceased.[30] Sports' pavilions for workers are included, even though connected with wholesale or retail distribution, if the trader is the occupier.[31] Showrooms and offices are excluded;

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[22] S. 31 (2).
[23] S. 31 (1).
[24] S. 31 (3).
[25] Act of 1945, s. 47, see below.
[26] Cf. p. 128, notes 84—87.
[27] Defined in s. 8 (5), the undertaking must be carried on by way of trade, see pp. 29, 30, 72. A gasworks is treated by the Revenue as a "mill, factory."
[28] This appears to be the only class of buildings or structures which is confined to those situated in the United Kingdom. The bringing of goods by sea or air from one part of the U.K. to another seems to suffice.
[29] S. 8 (1), (2), p. 702. The definition would include buildings for sawing or storing timber as part of a trade; sub-s. (5).
[30] Sub-s. (1), concluding words; sub-s. (3) with proviso, which applies in form also to retail shops, etc. See definitions in sub-s. (5) and s. 68 (1).
[31] S. 9 p. 702.

as are " retail shops " and hotels.[33] But if that part of a building which would otherwise be excluded has had not more than one-tenth of the total capital expenditure on the construction of the building or structure incurred upon it, the whole of the building or structure is to be included.[33]

Expenditure on acquisition of land, or of rights in or over land, is not included; nor is expenditure on preparing, levelling, etc., except for preparing or levelling the actual site to receive foundations if the work is likely to be valueless when the building or structure is demolished.[34] Expenditure on the provision of machinery and plant is not included here, but is the subject of a separate allowance.[35]

If expenditure is incurred on construction, and the " relevant interest " is sold before the building or structure is used, the net price paid by the buyer, if less than the actual expenditure, is to be substituted for the latter, as on the date when the purchase price becomes payable; if there is more than one sale before use, only the last of these is to be looked at.[36] If a building or structure has been constructed for sale in the course of a trade in such constructions, and the " relevant interest " is sold, the net price paid is to be substituted for the actual expenditure, whether the latter is greater or less than the net price.[37]

New Buildings and Structures : Initial Allowance.—If capital expenditure is incurred on or after April 6, 1944, on the construction of any industrial building or structure, an initial allowance of 10 per cent. of that expenditure is to be made to the person who incurred it. But it will only be made if that person is either the trader who will occupy the building or structure, or his lessor who, when the expenditure was incurred, was entitled to the " relevant interest ": that is, speaking generally, the interest which was then subject to the trader's tenancy or has since become subject to it.[38] This allowance will not be made if the building, etc., is not an industrial building or structure when it comes to be used;[39] nor if a scientific research allowance is admissible.[40]

If the expenditure was incurred before April 6, 1946, it is to be treated as incurred on that day; but any depreciation

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[33] S. 8 (3), see note [30], and definition in sub-s. (5). [33] Sub-s. (4).

[34] S. 14 (1) (a), (b), with proviso, p. 705. Even as regards the site to be covered, expenditure on cutting or tunnelling is excluded. [35] S. 13 (2).

[36] S. 5 (1). [37] S. 5 (2); paras (a) and (b) of which seem to have the same effect.

[38] S. 1 (1), (3), p. 695. " relevant interest " is defined in s. 10, p. 703, where various cases of merger, surrender, granting of leases, etc. are provided for; see also s. 12, and definitions of " lease " and connected words in ss. 68 (1), 69, p. 736. As to contributors, see p. 176.

[39] S. 1 (4), any additional assessment may be made if the allowance has already been granted, or if the section has been otherwise contravened. Merely temporary disuse after the appointed day is provided for in s. 11.

[40] S. 47; and see above.

allowances made are to be deducted, and if any of certain specified events (such as sale or demolition) has taken place before that day, there will be no initial allowance.[41]

Where the trader is the person to receive the allowance it is to be deducted from the amount at which his assessment would otherwise be fixed;[42] this will be done in the year of assessment based on the account year in which the expenditure was incurred if incurred on or after April 6, 1946, or, if incurred before that appointed day, then on the account year in which that day falls.[43] But in either case, if the trader when he incurred the expenditure was not yet carrying on the trade, the allowance will be made in the year of assessment in which he commences to do so (assuming that he commences the trade on or after April 6, 1946).[44]

Where the lessor is the person to receive the allowance, it will be made in the year of assessment in which the expenditure was incurred (or, if it was incurred before the appointed day, in the year in which that day falls): but if the tenancy had not begun when the expenditure was incurred, and the occupying tenant is the first person to use the building or structure, the allowance will be made in the year of assessment in which the tenancy begins (assuming that it begins on or after April 6, 1946).[45] The allowance will be made by discharge or repayment of tax, primarily of that borne by the lessor under Schedule A or the Act of 1940.[46]

If the "relevant interest" is sold, or comes to an end with a foreign concession, or the building or structure is destroyed, or ceases to be used, a "balancing charge" may be made in respect of any excess of "sale, insurance, salvage, or compensation moneys."[47]

Industrial Buildings and Structures: Annual Allowances—An annual allowance will be made of 2 per cent. of the capital expenditure on the construction of any industrial building or structure.[48] This is not confined to expenditure incurred, or construction carried out, after the appointed day: but it seems to be intended that the annual allowance shall not apply to any building or structure constructed fifty years or more before the appointed day. There is, however, no provision directly imposing such a limitation.[49]

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[41] S. 1 (3), with provisos (a), (b).
[42] S. 6 (1); s. 55, p. 728.
[43] S. 1 (2), (3), read with s. 57 (2); see pp. 142—143. But see p. 162, note [58].
[44] S. 1 (5), read with s. 57 (2); see p. 144. But see p. 162, note [58].
[45] S. 1 (2) and proviso, read with s. 57 (4).
[46] S. 6 (2), (6), read with s. 56; see Chap. 2.
[47] S. 3 (1), (3), (5); see definition in s. 68, p. 736; and also s. 17 (3), p. 708; and see p. 163.
[48] Together with buildings, etc. treated as industrial, see p. 159, s. 2 (1). As regards temporary disuse on or after the appointed day, see s. 11, p. 704.
[49] The suggestion in the text follows a memorandum issued with the Bill, based perhaps on s. 4 (5); or on s. 2 (3), or s. 3 (1), proviso.

The allowance is to be made (speaking broadly) to the person who is entitled to an interest in the building or structure as having himself incurred the expenditure, or as the successor of the person who incurred it.[50] The question whether a person is so entitled, and the question whether the building or structure is industrial, will be determined as on the last day of the account year on which that person's assessment is based, if he is the trader, or of the year of assessment, if he is a lessor. The allowance will be admissible for the first time in the year of assessment beginning April 6, 1946.[51]

In case of a sale of that interest after the appointed day, the annual allowance will be equal to the residue divided by the number of years between the year of assessment in which the purchaser was first entitled to an annual allowance, and the fiftieth year of assessment after that in which the building or structure was first used, both years inclusive.[52] In no case is the total of annual allowances to go beyond the "residue" of expenditure.[53]

Where the person to receive the allowance is the trader, it is to be deducted from the amount at which his assessment would otherwise be fixed, in the year of assessment based on the account year referred to; where he is a lessor, it will be made by discharge or repayment of tax, primarily of that borne under Schedule A or under the Act of 1940.[54]

Mills, Factories Allowance to Cease.—Speaking generally, no allowance for depreciation of mills, factories and other similar premises[55] will be granted in the year of assessment which begins on April 6, 1946, or thereafter.[56] But where, in the year of assessment before that just mentioned, this allowance applies to the premises, it will continue to apply for the next five years, unless at any time during that period the trader gives notice in writing to the inspector electing the contrary; if such notice is given, it will also apply to any person carrying on trade on those premises after the person who gave the notice has ceased to do so.[57]

So long as the mills, factories allowance is thus continued, the grant of the initial allowance and the annual allowance under Part I of the Income Tax Act, 1945, will be postponed; and the first day of the next year of assessment after the mills, factories allowance has ceased will be treated as the appointed day for every trade carried on on the premises.[58]

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[50] S. 2 (1) (a), (c). "Relevant interest" is defined in s. 10, p. 703. As to contributors, see p. 176.
[51] S. 2 (1) (a), (b), read with s. 57; see pp. 142—145. But see note [58], below.
[52] S. 2 (2).
[53] Sub-s. (3), see p. 697.
[54] S. 6 (2), (4), read with s. 56.
[55] See p. 172.
[56] I. T. Act, 1945, s. 7 (1), p. 701.
[57] Sub-s. (2), with proviso.
[58] Sub-s. (3).

Residue of Expenditure : Writing Off—Directions are given for calculating the residue of expenditure incurred on construction.[59] Any initial allowance made is to be written off as at the time when the building or structure is first used;[60] an annual allowance as at the time by which the question of its "industrial" nature is determined;[61] a scientific research allowance as on the last day of the relevant account year, or as at the time when the asset ceases to be used under the conditions which gave rise to this allowance.[62] If no annual allowance or scientific research allowance falls to be made for any year after that in which the building, etc., is first used, 2 per cent. of the expenditure is to be written off as at the end of the previous year; but this is not to apply to the year of assessment which begins April 6, 1946, or to any subsequent year, if the building, etc., was "industrial" on the last day of the previous year of assessment, if it was not, and the building, etc., is sold (on or after the appointed day) the amount of the annual allowance is to be written off as if the building, etc., had been in use as "industrial" on that last day.[63] Subject to certain limitations, the totals of any mills, factories allowances[64] or exceptional depreciation allowances[65] made for any year of assessment before that which begins April 6, 1946, are to be written off as at the last day of the year of assessment previous to the last-mentioned year.[66] Adjustment of the residue is provided for when a balancing allowance or balancing charge is made on the occasion of a sale.[67]

All the above provisions are to be applied where the Crown has been the owner of an industrial building or structure, and it has since been sold or otherwise disposed of.[68]

Balancing Allowances and Charges.—In any of the following events: where the interest of the person who incurred the expenditure or his successor is sold, where that interest depended on a foreign concession and has ended with it, or where (if he was a lessee) his leasehold interest comes to an end otherwise than by his acquiring a superior title, or where the building or structure is destroyed or ceases altogether to be used—a balancing allowance or a balancing charge may have to be made; unless the event happens more than fifty years after the account year in which

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[59] S. 4, p. 608.
[60] Sub-s. (2).
[61] Sub-s. (3), read with s. 2 (1) (b), see p. 162, above, but see proviso to s. 4 (3).
[62] S. 4 (4), read with ss. 28, 29 of the Act of 1944, see p. 158, above; but see proviso to s. 4 (4) of the I. T. Act, 1945.
[63] S. 4 (5) with proviso. The presence of proviso (a) and of sub-s. (6) suggests that the substantive part of sub s. (5) is intended to apply to years of assessment before, as well as after, the appointed day; if so, this might with advantage have been expressed. See, however, note [58], p. 162.
[64] See p. 162, above, and p. 127.
[65] See p. 135.
[66] S. 4 (6). But see p. 162, note [58].
[67] Sub-ss. (7), (8), to be read with s. 3.
[68] S. 4 (9).

the building or structure was first used.[69] Where the residue immediately before the event exceeds the "sale, insurance, salvage or compensation moneys," the excess will be allowed as a balancing allowance, or where there are no such moneys, the whole of that residue will be so allowed.[70] If those moneys exceed that residue, a balancing charge will be made on the amount of the excess; or if there is no such residue, on the amount of those moneys.[71] These allowances and charges are modified in certain circumstances.[72]

A balancing allowance is made by discharge or repayment of tax, if the interest is subject to a lease immediately before the event in question;[73] and if that is so, a balancing charge is made under Case VI.[74] Where this is not the case, the allowance or charge will be deducted from, or added to, the amount at which the assessment on the trade profits would otherwise be fixed.[75]

Requisitioned Land: Special Cases of Leased Land.—The provisions with regard to industrial buildings and structures above summarised are adapted to land which has been requisitioned by the Crown as if (broadly speaking) the Crown had held the land under a lease for the "period of requisition" (as defined), any sum paid for a building or structure, constructed during that period, to the Crown by the person entitled to possession is treated as being paid for the surrender of such a lease,[76] and a trader occupying such land during that period with the authority of the Crown is treated as having held under a sub-lease from the Crown.[77]

Those provisions are also adapted to cases where the lessee "holds over" after the term granted by a lease has expired, where a new lease is granted in pursuance of an option, where the lessor pays any sum to a lessee for a building or structure, and where a lease is granted to a new lessee and he pays a sum in connection therewith to the lessee under the old lease.[78]

Machinery and Plant: Initial Allowance.—Under Part II there is to be an "initial allowance" of 20 per cent. of any capital expenditure on the provision of machinery and plant incurred on or after April 6, 1944.[79] This allowance will be made not only to a person carrying on a trade, if the machinery

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[69] S. 3 (1), s. 10, pp. 697, 703, see also s. 11 (2), (3); as to account years, etc., see pp. 142—145.
[70] S. 3 (2), see definition of the phrase quoted in s. 68, and see s. 14 (3).
[71] S. 3 (3).
[72] Set out in sub-ss. (4), (5), and as to mines, oil wells, etc., see s. 55 (2), p. 729.
[73] S. 6 (4), (6), see p. 701, and see s. 11 (2), p. 704.
[74] S. 6 (5), see Chap. 10
[75] S. 6 (1).
[76] S. 12 (1), p. 704.
[77] *Ibid.*, proviso.
[78] Sub-ss. (2)—(5).
[79] S. 15 (1), (2), p. 706 sub-s. (4) provides for ships wholly or partly paid for before that date.

or plant is provided for the purposes of a trade;[80] but also to a person carrying on a profession, employment or vocation,[81] or an office,[82] if provided for the purposes of that profession, etc., or office; and to any person carrying on farming (where not assessed under Schedule B)[83] or market-gardening, or woodlands where he has elected to be assessed under Schedule D[84] if the provision is for the purposes of the farming, market-gardening or woodlands.[85] But in the last three cases, such an allowance will not be made where an allowance for agricultural or forestry land or buildings is admissible under Part IV.[86] Expenditure on alterations of existing buildings will be included (in all cases) if it is incidental to the installation of machinery or plant.[87]

If the expenditure is incurred before April 6, 1946, the amount of any wear and tear, obsolescence or exceptional depreciation allowances is to be deducted before the 20 per cent. is calculated; and there will be no initial allowance if the machinery or plant is no longer owned by the person who incurred the expenditure, or is permanently out of use.[88]

The allowance will be made to any such person by deduction from the amount at which his assessment would otherwise be fixed for the year of assessment based on his account year in which April 6, 1946, falls, or (after that) in which he incurred the expenditure;[89] or, if incurred when he was about to carry on the trade, profession, office, etc., for the year of assessment based on the account year in which he first carries it on.[90]

The machinery or plant provided need not necessarily be new; if it is second-hand, the person who incurs capital expenditure on providing it will still be entitled to the allowance.

Where, on or after April 6, 1946, and before the trade is permanently discontinued,[91] the machinery or plant is sold or destroyed, or is (permanently) out of use, a balancing allowance or charge may have to be made;[92] if it is afterwards replaced by the owner, he will have a right to elect for adjustment of any balancing charge.[93]

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[80] See Chap. 5, and for decisions on "plant," see p. 131. The term would include vessels, nets, etc., used in the fishing trade; as well as baths and other equipment for employees' welfare.

[81] See p. 95.

[82] See Chap. 11.

[83] See pp. 55—57, 71—72.

[84] See p. 60. There is a special provision in s. 23 (2), p. 711, relating to years before such an election was made.

[85] S. 23 (1); as to contributors, see p 176.

[86] S. 24.

[87] S. 21.

[88] S. 15 (2), with proviso; see pp. 131—135.

[89] S. 15 (1), (2), read with s. 22 (1); see pp. 142—144, 706, 711.

[90] S. 15 (3), see pp. 144—145, 706.

[91] That is, in fact, and not by operation of r 11, see pp 146—148.

[92] S. 17, p. 707; cf. somewhat similar provisions as to buildings and structures, p. 163.

[93] S. 18. See also s. 66 (1), proviso, p. 735.

If the machinery or plant ceases to belong to the trader because a foreign concession has come to an end, a balancing allowance or charge may be made, although the trade has not been permanently discontinued.[94] There are also special provisions relating to mines, oil wells, etc.,[95] and to ships damaged by "war risks."[96]

Deduction for Wear and Tear.—From and including the year of assessment which begins April 6, 1946, certain changes are to be made in the deduction for wear and tear of machinery and plant.[97] First, in every year of assessment the machinery and plant on which the deduction is computed will be that in use at the end of the account year on which the assessment is based.[98] Secondly, the ordinary rates of deduction are to be increased by 25 per cent. instead of 20 per cent.[99]

Further, in the case of machinery and plant provided on or after April 6, 1946, a proportion corresponding to any of the expenditure met directly or indirectly by the Crown or any Government or public or local authority or by any person other than the person providing it is to be left out of account.[1] The deduction for wear and tear is not to exceed the amount still unallowed at the beginning of the year of assessment, rules being laid down for the necessary calculation (with a special direction as to mutual trading).[2] Any initial allowance is to be written off as if it were an earlier wear-and-tear deduction.[3] There may in certain events have to be a balancing allowance or charge.[4]

Obsolescence Allowance– The allowance for obsolescence is not to apply to any machinery or plant provided on or after April 6, 1946.[5] And if any machinery or plant provided before that day is replaced after it, that allowance will only be made if the trader elects for it, by notice in writing to the inspector; if he so elects, there will be no balancing allowances.[6] If there is (on such election) an obsolescence allowance on machinery or plant provided between April 6, 1944, and April 6, 1946, the initial allowance will be written off as if it were a wear and tear allowance.[7]

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[94] S. 17 (1) (b), with proviso (ii).

[95] S. 17 (1), proviso (i).

[96] Sub-s. (3), proviso.

[97] Ss. 16 *sqq.*, p. 706, *see* pp. 131—134.

[98] S. 16 (1).

[99] Sub-s. (2), *see* p. 132, note [19]. A special election for mines, etc. is given by the proviso.

[1] Sub-s. (3) (a), but any insurance or other compensation moneys are to be brought in, if this be the correct reading of s. 66 (2); *see* p. 177.

[2] Sub-s. (3) (b), s. 19, p. 710, *see* p. 73.

[3] S. 16 (4).

[4] *See* p. 165, as. 17, 18 apply to this deduction as well as to the initial allowance.

[5] S. 18 (2) (a); *see* p. 134.

[6] Sub-s. (2) (b)

[7] S. 16 (4); *see* p. 134.

Machinery or Plant which is Let—Where the machinery or plant is let on such terms that the burden of its wear and tear falls directly on the lessor, he will be entitled to an initial allowance under the same conditions as if he were the person carrying on trade.[8] And a wear and tear deduction (increased by 25 per cent. above the ordinary rates) will be made to him under similar conditions, for so much of the machinery and plant as is in use at the end of the year of assessment, and proportioned to the period of letting within the year.[9] These allowances will be made to the lessor by way of discharge or repayment of tax, and primarily against income from the letting of machinery and plant.[10] Any balancing charge that results will be made on him under Case VI.[11]

Mines, Oil Wells, etc.—Under Part III there will be an initial allowance as well as annual allowances, in respect of certain capital expenditure incurred in connection with the working of a mine, oil well, or other source of mineral deposits[12] of a wasting nature. The expenditure must be incurred either "on searching for, or on discovering and testing deposits, or winning access thereto," or else "on the construction of any works which are likely to be of little or no value when the source is no longer worked," or to be valueless to the person working it under a foreign concession when that comes to an end.[13] The initial allowance applies only to expenditure of the second of these kinds; the annual allowance applies to both kinds; if it were not for this distinction, the two descriptions might be thought to overlap, *e.g.*, expenditure on winning access might come within either description.

There does not appear to be any allowance for expenditure on prospecting which has not resulted in the working of a mine, etc. The following kinds of expenditure are specifically excluded:[14] expenditure on the acquisition of the sites or the deposits or of rights in or over either of these; expenditure on machinery or plant, this being dealt with by Part II; expenditure on buildings and structures for processing the raw product, or for the occupation or welfare of workers, both of these being dealt with by Part I; and expenditure on a building wholly constructed for use as an office, or partly so constructed, if the expenditure on the office portion was one-tenth or more of the whole.[15]

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[8] S. 20 (2), p. 711.

[9] Sub-s. (1), read with sub-s. (2); r. 6 (5), see p. 132, will not have effect in the year of assessment which begins April 6, 1946, or thereafter

[10] S. 22 (2); see s. 56, p. 729

[11] S. 22 (3); see Chap. 10.

[12] See definition in s. 68 (1), p. 736.

[13] S. 25 (1), p. 712; see definitions in s. 68 (1).

[14] S. 25 (2).

[15] Cf. s. 8 (3), p. 702.

Construction of Works : Initial Allowance—The initial allowance is to be made in respect of capital expenditure on the construction of such works as are described as "likely to have little or no value to [the trader] when the source is no longer worked." If such expenditure is incurred by a person carrying on, or about to carry on, a trade which consists of, or includes, the working of a mine, etc., 10 per cent. of that expenditure will be allowed to him.[16] It must have been incurred on or after April 6, 1944, but if it was incurred before April 6, 1946, any mills, factories or exceptional depreciation allowance is to be deducted before the percentage is applied; and if the asset representing the expenditure has been sold before April 6, 1946, there will be no initial allowance.[17]

The allowance is to be deducted from the amount at which the assessment would otherwise be fixed;[18] thus will be done in the year of assessment based on the account year in which the expenditure was incurred, or in which the appointed day falls, if it was incurred before that day; but if in either case, the trader incurred the expenditure before he carried on the trade, it will be deducted in the year of assessment in which he commences to do so (assuming that he commences the trade on or after April 6, 1946).[19]

Annual Allowances- These allowances apply to the whole of the capital expenditure above described, whether incurred on construction of works, or on searching for, etc., or winning the deposits; and they apply (in different ways, it is true) to expenditure incurred before, as well as on or after, the appointed day.[20] In either case, it must have been incurred for the purposes of the trade, or in connection with the source forming the trade or forming part of the trade. As regards expenditure incurred on or after April 6, 1946, the amount of the annual allowance is calculated by applying to the "residue" of the expenditure (incurred between that day and the end of the account year) either the fraction of which the numerator represents the actual output of the source in the account year, and the denominator represents the sum of that actual output and the total potential future output of the source, estimated as at the end of the account year; or else the fraction one-twentieth, whichever is the greater.[21]

As regards expenditure incurred before the appointed day, a proportion of it is to be treated as incurred on that day; this

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[16] S. 26 (1), (2), s. 29 (1), pp. 712, 715. As to contributors, see p. 176.
[17] S. 26 (1), (2), see pp. 127, 135. Rules may be made for determining what is such an asset, s. 39 (1) (c).
[18] S. 31, p. 716.
[19] S. 29 (1), read with s. 57 (2); and see p. 144.
[20] S. 27 (1), (2), (4), p. 713. They are made by deduction from the amount of the assessment, s. 31. As to contributors, see p. 176.
[21] S. 27 (2); see below as to the meaning of "residue."

proportion is to be ascertained by first subtracting from the total incurred before that day, the amount attributable to any asset representing part of the expenditure which has been sold before that day, together with any mills, factories allowances, and exceptional depreciation allowances made in respect of buildings unsold, and then applying to the result a fraction of which the numerator represents the total potential future output from the source estimated as at April 6, 1946, and the denominator represents the sum of the total actual output before April 6, 1946, and the potential future output. When the proportion of the earlier expenditure has been ascertained, it will be added to the expenditure incurred in the account year in which April 6, 1946, falls (and in each account year thereafter), and the annual allowance will be calculated by applying the previously indicated fraction to this aggregate.[22] Where, however, assets representing expenditure of the kind in question have been acquired from a predecessor in working the source, elaborate provisions are made for arriving at the proportion of expenditure attributable to those assets.[23] In any case to which the First Schedule applies, the amount may be increased on application to the General or Special Commissioners, if inadequate having regard to the dates on which the expenditure was incurred.[24]

Expenditure incurred for the purpose of a trade by a person about to carry it on is to be treated as if incurred on the first day on which he carries it on.[25] And if a person, who has incurred expenditure on searching for, discovering, testing and winning deposits, but has not carried on the trade, sells any assets representing that expenditure to a purchaser who carries on a trade in connection with the source, the latter is deemed to have incurred the expenditure represented by those assets, or the price paid for them, whichever is less.[26]

The " residue " to which the fraction first indicated is to be applied is the remainder of the expenditure after deducting initial allowances, annual allowances and exceptional depreciation allowances, together with any " sale, insurance, salvage or compensation moneys " in respect of any asset representing the expenditure.[27]

Rules to be made by the Commissioners of Inland Revenue will provide for determining the extent of a source of deposits and the amount of actual output and estimating potential future output, for determining what assets are to represent expenditure, and for ancillary matters.[28]

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[22] Sub-s. (4), read with First Sched., Parts I, II, p. 738.
[23] Sub-s. (4), read with First Sched., Part III.
[24] Sub-s. (3), proviso.
[25] S. 29 (1), p. 715.
[26] Sub-s. (2).
[27] S. 27 (5); and see s. 28 (5), (6), and definition in s. 68 (1).
[28] S. 30.

A special provision regarding a source which ceases to be worked, or the foreign concession for which comes to an end, gives an election to spread the annual allowance over the year of assessment in which that event occurs and the five previous years.[29]

Sale as a Going Concern—If assets representing expenditure of the kind in question are sold by a person carrying on the trade on or after April 6, 1946, and brought for the purpose of working the source or a part of it, a balancing allowance or balancing charge may have to be made to or on the seller, according as the net proceeds of the sale are less or more than the residue;[30] and the buyer will be deemed to have incurred expenditure equal to the price attributable to the assets, or the residue immediately after the sale, whichever is less.[31]

Agricultural Land: Maintenance Relief—For the year of assessment which begins April 6, 1946, and for subsequent years, the owner of agricultural land will be entitled to repayment or discharge of tax in respect of the maintenance-management relief[32] on any balance which the aggregate assessments (on which the Schedule A tax is levied)[33] for the estate comprising that agricultural land are not sufficient to satisfy.[34] For this calculation, units used wholly or partly for purposes other than husbandry are to be left wholly or partly out of account; and the cost of maintenance, repairs, insurance and management actually incurred is to be abated accordingly.[35] Subsidies and contributions by other persons are to be left out of account.[36]

Agricultural land means "land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry";[37] this definition excludes woodlands, but market gardens are included.[38]

The repayment or discharge will be made primarily against "agricultural income" as defined.[39]

Agricultural and Forestry Land: New Allowance—If an owner or tenant of agricultural or forestry[40] land incurs any capital expenditure on the construction of farm houses, farm or forestry buildings, cottages, fences or other works, he will be entitled to an allowance of 10 per cent. of that expenditure in

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[29] S. 27 (3), p. 713.
[30] S. 28 (1)-(6), see above as to residue, determination of assets, etc.: s. 31.
[31] S. 26 (7), s. 31.
[32] Under Sched. A, No. V, r. 8; see pp. 33-35.
[33] *I.e.*, the assessments as reduced for the purposes of collection," r. 7; see p. 32. As to "estate," see p. 34.
[34] I. T. Act, 1945, s. 32, p. 716.
[35] *Ibid.*, proviso, as to units of assessment, see p. 27.
[36] S. 67, p. 726.
[37] S. 34; as to "husbandry," see p. 56.
[38] Contrast definition of "farm land," p. 55.
[39] S. 32; s. 34.
[40] See definitions in s. 34, p. 718. "Forestry land" means woodlands charged by election under Sched. D, see p. 60.

the year of assessment following the year ending March 31 in which it was incurred, and in each of the nine succeeding years.[41]

Expenditure on maintenance or repairs such as that to which rule 8 of No. V applies (which includes replacements necessary to maintain the rent)[42] is not to be taken into account;[43] of expenditure on a farm house, only one-third is to be included, or less if the house is out of due relation to the farm. The expenditure must have been incurred for the purpose of husbandry or forestry on the land in question; if it serves other purposes as well, it is to be abated in proportion.[44] Any exceptional depreciation allowance made for a year before that in which the appointed day falls is to be deducted.[45]

The expenditure must have been incurred on or after April 6, 1944; if before April 6, 1946, it will be treated as if incurred upon the latter day.[46]

Where the person who would be entitled to the allowance if he continued to be the owner or tenant, transfers the whole or a part of his interest in the land, the allowance is to be apportioned for the year of the transfer; and in subsequent years, is to be made to the transferee. Where it is a tenant who would have been entitled to an allowance, and his tenancy comes to an end, the incoming tenant, if he makes any payment in respect of assets representing the expenditure, is treated as the transferee; if not, the landlord is so treated.[47]

The allowance is to be made by way of discharge or repayment, and primarily against "agricultural income" or "forestry income."[48]

Machinery and Plant—If either of the above allowances is admissible for expenditure on machinery or plant included in houses, buildings or works used for purposes of husbandry or forestry, no wear and tear or obsolescence allowance, and no initial or balancing allowance[49] is to be made.[50]

Patents—Several of the provisions in Part V, which deals with patents, introduce matters hitherto foreign to the law of income tax. There is to be an annual allowance in respect of capital expenditure on the purchase of patent rights,[51] and a charge on capital sums received for their sale;[52] expenses of obtaining the grant or extension of a patent, and of devising a patented invention, are to be deducted or allowed;[53] patent

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[41] S. 33 (1); see sub-s (7) as to varying the year by agreement. As to contributors, see p. 176.
[42] See above, and p. 34
[43] S. 33 (1).
[44] Sub-s. (2) (a), (b). As to "husbandry," see p. 56 Works for land drainage, or for supply of water or electricity appear to be included.
[45] Sub-s. (3), proviso
[46] Sub-s. (3).
[47] Sub-s. (4).
[48] S 33 (5) s. 34; and see s. 56.
[49] See pp. 164—166, above.
[50] S. 24, p. 712.
[51] Ss. 35, 36, p. 719.
[52] S. 37.
[53] S. 39.

income is in certain cases to be earned income, and in certain cases may be spread over six years.[54] "Patent rights" means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent,[55] and their sale or purchase includes the grant or acquisition of a licence.[56]

Annual Allowances.—If capital expenditure is incurred on or after April 6, 1946, on the purchase of patent rights (including the acquisition of a licence),[57] an annual allowance is to be made to the person who incurred it, if he is a person carrying on a trade in the United Kingdom,[58] and if those rights or any rights out of which they were granted were used for the purposes of the trade, or were to be so used, in the account year.[59] Again, the person who incurred the expenditure will be entitled to the allowance if any income receivable by him in respect of the rights would be liable to income tax, either (it would seem) by way of deduction against royalties or because the rights are a foreign possession and the income is chargeable under Case V.[60] But there will be no annual allowance if the rights, or any rights out of which they were granted, have been the subject of a sale (which includes the grant of a licence) before April 6, 1946, for a capital sum or partly for a capital sum.[61]

The allowance is arrived at by spreading the expenditure equally over a number of years, generally seventeen; but if the rights are purchased for a specified period, the number of years in that period is taken, if less than seventeen; if there is no such period and the rights purchased begin one complete year or more after the date on which the patent rights become effective, the number of years is to be seventeen less the number of complete years elapsed between the last-mentioned date and the date when the rights purchased begin, or if seventeen complete years have so elapsed, the whole of the expenditure is to be allowed in one year.[62]

Expenditure incurred on or after April 6, 1946, for the purposes of a trade by a person about to carry it on is to be treated as if incurred on the first day on which he does carry it on, unless before that day he has sold all the rights purchased;

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[54] Ss. 40, 41

[55] This somewhat circular definition is found in s. 43 (1), p. 724

[56] S. 43 (2)

[57] S. 35 (1), read with s. 43 (2), pp. 719, 724.

[58] S. 35 (1), proviso (a), read with s. 42 (1) (a), see Chap. 5

[59] S. 42 (1) (b); see pp. 142–146

[60] S. 35 (1), proviso (b); see p. 157 and Chap. 9.

[61] S. 38, p. 722, read with s. 43 (2)

[62] S. 35 (1), (2), with provisos (a), (b), (3); definition of "the commencement" in s. 43 (1). In reckoning a "number of years" any odd period of less than twelve months is to be treated as a year, but this does not apply where "complete years" are indicated: s. 43 (4), with proviso.

otherwise, the seventeen or other number of years begin with the year of assessment based on the account year in which the expenditure was actually incurred.[63]

In the case of a trader, the allowance will be deducted from the amount at which the assessment would otherwise be fixed.[64] In other cases, it will be made by repayment of tax and will be available against income from any royalty or other sum paid in respect of the user of a patent, and against any capital sum or other amount on which tax is payable under Part V.[65]

Lapse or Sale of Patent Rights.—If before the end of the years for which the annual allowance would otherwise be granted, the patent rights come to an end and are not revived; or if the person who incurred the capital expenditure sells (or grants a licence over) all those rights or so much of them as he still owns; or if he sells (or grants a licence over) part of those rights and any net capital sums received are equal to or greater than so much of his capital expenditure as remains unallowed, no annual allowance will be made to that person after the account year in which any such event happened.[66] But in the case of lapse without revival, and in the case of sale or licence where the net capital sums he receives are less than his capital expenditure unallowed, that person may receive a balancing allowance.[67] In the case of sale or licence where the net capital sums he receives are greater than his capital expenditure unallowed, that person may have to submit to a balancing charge.[68] Where a sale or licence applies only to a part of the rights purchased, and the net capital sums received are less than the capital expenditure unallowed, there will be an allocation of the annual allowance.[69]

Capital Receipts : New Charges—*Capital sums*[70] *received for* the sale (or the grant of a licence) of patent rights are for the first time to be charged with income tax; the provisions differ according as the seller is or is not resident in the United Kingdom.[71] They are to apply only if the sale or grant takes place on or after April 6, 1946;[72] and are not to apply if

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[63] S. 35 (1), with proviso (c). There is no provision here, such as there is in other parts of the Act, for expenditure before the appointed day.

[64] S. 42 (1), s. 56 (1).

[65] S. 42 (2), read with "income from patents," s. 43 (1). Note that the word "available" appears without qualification in s. 42 (2); contrast s. 6 (6), s. 22 (2). As to capital sums, etc., see below.

[66] S. 36 (1), (5), p. 719, read with s. 43 (3), as to "account year," see p. 157.

[67] S. 36 (2), (5), (6). [68] Sub-ss. (3), (5), (6).

[69] Sub-s. (4); this is difficult to read with sub-s. (1) (c), but the above appears to be the result.

[70] See s. 64, p. 734.

[71] See pp. 265—268, as to residence of an individual; pp. 79 *sqq.*, as to that of a company.

[72] S. 37 (1), (2), p. 721.

the patent rights or any rights out of which they were granted, have been sold or licensed before April 6, 1946, for a price which consists of, or includes, a capital sum.[73]

The charge will be made under Case VI.[74] If the person who sells or licenses any patent rights is resident, he is to be charged on one-sixth of the net capital sum received in the year of assessment in which he receives it and in each of the five succeeding years. But he may elect (by notice in writing to the inspector given within twelve months after the end of the year of assessment in which he receives it) to be charged for that year on the whole amount.[75]

In contrast to the above, the charge upon a non-resident person applies only on the sale or licence of rights under a patent granted under the laws of the United Kingdom.[76] The seller or licensor is liable to have tax on the capital sum in question deducted against him by the payer as and when it is paid; the payer is to deliver an account and to be assessed with tax on the sum paid.[77] Alternatively, the payee may be directly charged under Case VI.[78] But the non-resident payee may elect (by notice in writing to the Commissioners of Inland Revenue given within twelve months after the end of the year of assessment in which the sum is paid) to have the payment spread equally over that and the five succeeding years. Such an election will not affect the deduction of tax by the payer or the assessment upon him; but if the tax has been so deducted, yearly adjustments will be made and (in proper cases) repayments.[79]

If the seller or licensor (whether resident or non-resident) was himself a purchaser or licensee, wholly or partly for a capital sum, the amount on which he is to be charged is to be reduced accordingly; in the case of the non-resident seller, this is not to affect the amount of tax deductible by the payer, but only the subsequent adjustments.[80]

Provision is made for cases of death, winding-up and change of partnership.[81]

A sum paid for the use, etc., of a patented invention by the Crown or by a Government outside the United Kingdom is treated as if paid for a licence.[82]

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[73] S. 38

[74] See Chap. 10.

[75] S. 37 (1), with proviso.

[76] S. 37 (2); see s. 43 (1).

[77] S. 37 (2) (b), (c), incorporating General Rule 21, as to which, see pp. 196, 203; but the amount cannot be allowed to the payer as a loss; contrast p. 153. If the payer also is non-resident, he may be assessed in the name of an agent, if he has one, General Rule 5, see p. 209

[78] S. 37 (2) (c), see Chap. 10.

[79] *Ibid.*, proviso.

[80] Sub-s. (3), with provisos.

[81] Sub-s. (4) and Second Sched., p. 740.

[82] S. 43 (3).

Patent Expenses, etc.—In computing the profits of any trade,[83] there is to be a deduction of any fees paid or expenses incurred, on or after April 6, 1946, in obtaining a patent or the extension of the term of a patent for the purposes of the trade.[84]

If similar fees or expenses are paid or incurred by a person otherwise than for a trade carried on by him, he will receive an allowance of their amount for the year of assessment in which they were paid or incurred.[85]

Where a patent is granted in respect of any invention, the individual who actually devised the invention, whether alone or in conjunction with any person, will receive an allowance of the net amount of any expenses which he has incurred and which are properly ascribable to the devising of the invention (apart from expenses which would give rise to any other allowance). This allowance will be made for the year of assessment in which the expenses are incurred,[86] or if incurred before April 6, 1946, in the year of assessment which begins on that day. In the latter case, there will be a reduction of the amount for the number of complete years that have previously expired.[87]

Earned Income.—Where an individual receives income from rights under a patent granted for an invention actually devised by him (whether alone or jointly with another), that income will be treated, from April 6, 1946, as earned income, except so far as the rights have at any time belonged to any other person.[88] As well as royalties or other annual sums against which tax is deducted under General Rule 19 or 21,[89] the "income" here referred to seems to include capital sums charged under Case VI.[90]

Spreading of Royalties, etc. Where a royalty or other annual or other sum is paid in respect of the user of a patent (over a period of six complete years or more) so that tax is deductible in making the payment,[91] the recipient may require it to be treated as having been paid in six equal yearly instalments, the last on the date of the actual payment. If the period of user is more than two complete years, but less than six, the tax may be similarly spread over the number of complete years in the

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[83] See Chap. 6; and as to a trade which forms a foreign possession, see pp. 228—230. The patents here referred to are not confined to United Kingdom patents.

[84] S. 39 (1), p. 722, note that s. 42 (1) does not apply here.

[85] By way of discharge or repayment, s. 39 (2), read with s. 42 (2).

[86] S. 39 (3); s. 42 (2).

[87] S. 39 (4), see s. 43 (4), proviso.

[88] S. 40, see p. 12. This provision may also increase the wife's earned income relief indicated on p. 11.

[89] P. 203.

[90] By virtue of s. 37, see p. 174, the above seems to be the effect of s. 40, though it speaks of "income from patent rights," and not "income from patents," which is defined in s. 43.

[91] Under General Rule 19 or 21, see p. 203.

period.[92] This section is specifically applied to surtax, and its working in that connection is intelligible.[93] The section is silent as to how it shall be applied to income tax at the standard rate, but presumably this must be done by repayment of any tax deducted at too high a rate. No special mode is indicated by which the relief is to be required.

Trade Marks and Designs—Fees paid and expenses incurred on or after April 6, 1946, in obtaining for the purposes of any trade, the registration of a trade mark or its renewal, or the registration of a design or extension of the period of copyright, are to be deducted in computing the profits of that trade.[94]

Contributions by Traders or their Lessors—Any of the allowances dealt with in this chapter which relate to capital expenditure on industrial buildings and structures, machinery and plant, mines, oil wells, etc., or agricultural or forestry land[95] (but not those relating to scientific research or patents) will be admissible to a person who has contributed a capital sum to that expenditure, if he has done so on or after April 6, 1946, for the purposes of a trade carried on or to be carried on either by him, or by a tenant of land in which he has an interest.[96] "Trade" here includes husbandry and woodlands carried on in the United Kingdom, so long as charged under Schedule D, but not apparently a profession, employment, vocation or office.[97] The initial or annual allowance will of course be granted to such a person only on the amount of his contribution.[98] The asset provided is to be deemed at all material times to continue in use for the purposes of the trade concerned.[98] And the wear and tear allowance will in such a case be increased by 25 per cent. whether the trade is carried on by contributor or tenant.[99] Provision is made as to transfers of the trade or the interest, somewhat differently for husbandry and woodlands and for trades in general.[1]

Examples of such contributions would be those made by an owner of land for the installation of electricity or water supply to a farm which he lets to a tenant or keeps in hand, or by the owner or tenant of a mine for such an installation.

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[92] S. 41 (1), (2), (3), p. 723. This does not apply (sub-s (4)) to the capital sums now to be charged by s. 37 (2). S. 41 does not depend on "the appointed day."

[93] See Chap. 15. [94] S. 62, p. 734.

[95] S. 66 (3), p. 735, does not seem to apply to the owner's maintenance allowance dealt with in s. 32, *cf* s. 67.

[96] S. 66 (3); that is, the "relevant interest" as defined in s. 10, p. 703; see Third Sched., para. 3 (1), p. 742.

[97] Although these qualify for the machinery and plant allowances in general, see s. 23 (1) (a).

[98] Third Sched., para. 1 (a).

[99] Para. 1 (b), with ss. 16 (2), 20, p. 166, above. [1] Paras. 2—4; s. 33 (4), p. 717.

Other Contributions and Subsidies—Expenditure, or any part of it, which has been, or is to be, met directly or indirectly by the Crown or by any government or public or local authority in or out of the United Kingdom is not to be regarded for any of the purposes of the Income Tax Act, 1945, as having been incurred by any person to whom this Act refers.[2] But expenditure which has been, or is to be, met directly or indirectly by a second person (not being the Crown or any government or other such authority) will be brought into the account, unless that second person is a contributor who is himself entitled to an allowance in respect of his contribution, as described in the preceding paragraph, in the last-mentioned case, the amount of the contribution will be excluded from the first person's expenditure.[3] Insurance moneys and other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use, will be taken into account.[4]

Sales, etc.—The sale of property is referred to in many of the provisions of the Income Tax Act, 1945, which are summarised above. In such references, "sale" includes exchange, and the sale of a leasehold interest includes surrender for valuable consideration.[5] If the relevant property has been sold together with other property, the net proceeds will be apportioned; and the aggregate proceeds for all property sold in one bargain will be thus apportioned, even though separate prices have been agreed for the items. The same provisions apply to "other sale, insurance, salvage or compensation moneys."[6] A succession which is in general treated as a discontinuance[7] is to be treated as a sale to the successor, of any property in use for the purpose of the trade, profession or vocation immediately before and after the succession, and the market price at the time as the net proceeds of that sale.[8]

If a sale is between companies or partnerships mutually or jointly controlled, or is collusive, the market price may also have to be so treated; in such a case, where the sale is of machinery or plant, a sum called the "limit of recharge" may

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[2] S. 66 (1), p. 735. The provisions of this section, however, do not apply to the calculation of a balancing charge in respect of machinery or plant provided before the appointed day, see s. 17 (3), p. 708.

[3] S. 66 (2), with its paragraph (b), is a masterpiece of obscurity, but the writer hazards the above suggestion as to its intended meaning.

[4] The effect of paragraph (a) was fortunately explained (as above) by the Attorney-General in Committee. Hansard, Vol. 410, Col. 2408.

[5] S. 58 (3), p. 731.

[6] S. 58 (1), (2): the whole of s. 58 will apply to the wear and tear and obsolescence allowances, and to allowances for scientific research, from April 6, 1946, sub-s. (4). See definition in s. 68 (1).

[7] See p. 148.

[8] S. 60 (1). No initial allowance will be admissible as a consequence of such succession. Woodlands under Sched. D are included by sub-s. (3).

have to be substituted; and there will be no initial allowance.[9] These provisions are modified to meet cases of mere book transactions, between associated companies; a right of election is given to them in such cases.[10]

The procedure for apportionment, and for determining market prices, is laid down; the appeal provisions are to be applied.[11]

Any reference to the time of a sale relates to the time of completion, or the time when possession is given, whichever is the earlier.[12]

A partnership is to be treated as having carried on the trade, profession or vocation at all material times, so that changes in the persons carrying it on will not affect any allowances or charges admissible under the Act.[13]

Claims : and Carry Forward—Any claim under the Income Tax Act, 1945, for an allowance to be made in charging the profits of a trade, profession, employment, vocation or office or of the occupation of land assessed under Schedule D, that is, by deduction from what would otherwise be the amount of the assessment for any year of assessment, is to be made in the annual return of that year.[14] Any such allowance to which full effect cannot be given in that year because that amount is insufficient may be carried forward like the wear and tear allowance; and losses may be also carried forward where an allowance under the Act of 1945 prevents full relief being given within six years.[15]

On the other hand, claims for those allowances which are to be made by way of discharge or repayment of tax " available " or " available primarily " against a specified class of income are to be made and determined in the manner indicated in Chapter 16;[16] but the claimant in making his claim may elect to have it determined by the Special Commissioners, except in the case of agricultural or forestry land or buildings.[17] There is provision for carry forward in such cases also.[18]

[9] S. 59, p. 731; " Control " is defined in s. 68 (1), p. 736
[10] S. 59 (3), 2nd proviso, (4).
[11] S. 61, see Chap. 18.
[12] S. 68 (3).
[13] S. 60 (2), see sub-s. (3), as to woodlands
[14] S. 55 (1), (3), p. 728. this does not apply to expenses deductible in *computing* profits, sub-s. (5), see *e.g.*, p. 175.
[15] Sub-ss. (1), (2), see pp. 134, 154
[16] S. 56 (1), (3), see p. 729. As to appeals, see Chap. 18
[17] Sub-s. (3), proviso.
[18] Sub-s. (1).

CHAPTER 8

INTEREST, ANNUITIES, DISCOUNTS, ETC.: SCHEDULE D, CASE III

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Scope of Case III.—"All interest of money, annuities and other annual profits or gains not charged under Schedule A, B, C, or E" (and not specially exempted from tax),[1] are charged under Schedule D.[2] Case III is described as embracing "profits of an uncertain value," and "other income described in the rules applicable to this case"; but the description is misleading, for those rules extend the tax to six classes of annual payments of the nature of interest, annuities, discounts and so forth;[3] to the income of investments of foreign life assurance companies:[4] and to certain profits of cattle and milk dealers.[5]

Moreover, Case III has been enlarged by the transfer[6] of those miscellaneous profits derived from lands or other hereditaments which were formerly assessed under No. II of Schedule A,[7] namely:—

1. Tithes taken in kind;

2. Dues, etc., in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and teinds in Scotland;

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[1] Exemptions in favour of charitable and other bodies (including the exemption in respect of income and other deposits of a superannuation fund) are considered in Chap. 14.

[2] Sched. D, 2, see p. 472.

[3] Sched. D, rules applicable to Case III, r. 1, see p. 479

[4] R. 3, see p. 480.

[5] R. 4; the effect of this rule is dealt with in Chap. 3, at p. 59.

[6] Act of 1926, s. 28, and Third Sched., see pp. 529, 535.

[7] See p. 454; the numbers used in the text are those of the relevant rules of No. II.

3. Tithes compounded for, and all rents and money payments in lieu of tithes arising from lands;[8]

5. Profits of manors and other royalties, including all dues and services or other casual profits (not being rents or other annual payments reserved or charged);[9]

6. Fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof);[10]

7. Profits other than the above (and not payable under deduction of tax under No. VIII of Schedule A[11]), arising from lands, etc., not in the actual possession or occupation of the person to be charged, *e.g.*, a dead-rent payable in respect of coal comprised in a mining lease, but not yet won.[12]

In view of the wide variety of the sources of income embraced by Case III, it can best be considered in relation to each particular rule. But it may here be pointed out that interest payable in the United Kingdom out of public revenues is (generally) charged under Schedule C[13] and not under Schedule D; and that annuities in the nature of pensions are not charged under Case III of Schedule D, unless payable out of the funds of any institution in India.[14]

Income from securities, stocks and shares in any place out of the United Kingdom is charged under Cases IV and V, and not under Case III.[15]

Further, the tax chargeable under Case III is, speaking generally, paid by deduction "at the source" and not by direct assessment.[16] The rules, therefore, which give the payer of interest, etc., the right, and impose on him the obligation, to deduct tax in making the payments due from him, have an important bearing on those of Case III.[17] Share interest and

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[8] So far as these are still in existence after the appointed day under the Tithe Act, 1936; see p. 215.

[9] See, however, Law of Property Act, 1922 (12 & 13 Geo. 5, c. 16), ss. 128, 138.

[10] In practice this rule has been applied only to fines on renewal of renewable leases; but see *B. G. Utting, Ltd.* v. *Hughes*, [1939] 2 K. B. 231, *per* CLAUSON, L.J., at 245. The proviso to r. 6 affecting the computation of profits is preserved: see p. 455. See also Law of Property Act, 1922, Fifteenth Sched., art. 7.

[11] See pp. 43—48, 52. Tax is (speaking generally) not deductible under No. VIII unless it has been paid in the first instance by an occupier of land.

[12] See *Hill* v. *Gregory*, [1912] 2 K. B. 61 (see p. 217). R. 7 does not apply to the receipts of a cemetery company: *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1887), 17 R. 154, 2 Tax C. 516 (see p. 141), nor to payments made to owners of a field covered with slag for the right to remove the slag: *Shingler* v. *Williams* (1933), 17 Tax C. 574, 49 T. L. R. 221. Mining royalties paid in excess over the assessed profits of the mine (*Stewart* v. *Normanby Estate Co., Ltd.* (1933), 18 Tax C. 244), payments for the right to let down the surface (*Elliott* v. *Burn*, [1935] A.C. 84), and dead-rents subject to recoupment, are now dealt with by Act of 1936, s. 21: see p. 136.

[13] See Chap. 5.

[14] See p. 191. Annuities in the nature of pensions are in general charged under Sched. E: see Chap. 11.

[15] See Chap. 9.

[16] Cf. *Purdie* v. *R.*, [1914] 2 K. B. 112, and the remarks thereon in *Brooks* v. *I. R.*, [1917] 1 K. B. 61, [1918] 1 K. B. 257, see p. 316.

[17] See pp. 185 *sqq.*

loan interest paid by registered societies to persons whose usual place of abode is within the United Kingdom are to be paid without deduction of tax, and are the subject of direct assessment.[18]

Where the payer is entitled to deduct tax, and fails to do so previous to the passing of the Income Tax Act for the year of assessment, the payee is liable to direct assessment under Case VI on the profits of the year.[19]

Basis of Assessment: Sources of Income Acquired or Discontinued—Where the tax in respect of any of the sources of income charged under Case III cannot by law be deducted at the source, and is directly assessed (a return having to be made for that purpose),[20] the tax is in general computed on the profits of the preceding assessment year.[21] But in the first and second years in which those profits arise, the tax must be computed on the profits of the first or second year as the case may be; unless the profits first arose on April 6 of the first year, in which case the tax for the second year is computed on the profits of the first year, but the person charged is entitled (on giving notice) to be charged on the profits of the second year.[22] Even in the third year (if the first year was a broken year) he is similarly entitled to be charged on the profits of the third year.[23]

If a person receives income from more than one of the sources grouped under rule 1 (which includes interest of various kinds, interest on War Loan, etc., paid without deduction of tax, and profits on discounts), the whole of such income may be charged in one sum.[24] But if in any year of assessment[25] he ceases to possess any source of such income (or part of any source), the income from that source is to be computed separately upon the actual receipts in that year down to the date when he ceases to possess the source or part.[26] If, on the other hand, he acquired a new source of such income or an addition to any such source,

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[18] Act of 1933, s. 32 (1), (2): "paid" includes "credited," sub-s. 7 (d). See p. 154.

[19] See p. 237.

[20] See p. 357.

[21] Sched. D, Case III, r. 2, as substituted by Finance Act, 1922, s. 17, see para. (1) (b), p. 479. The phrase "profits or income" seems to have been suggested by the words describing Case III in Sched. D, 2: see p. 472. The assessment year begins on April 6: see p. 4.

[22] R. 2 (1) (a) read with proviso (i) and (11), the notice must be given in writing within twelve months after the end of the year of assessment.

[23] R. 2, proviso (ii): see last note.

[24] Act of 1926, s. 30, see p. 531. This section does not apply to the profits of dealers in cattle or milk charged by r. 4, nor to the profits formerly grouped under No. II of Sched. A, nor does it appear to apply to the income of foreign life assurance companies dealt with by r. 3 of Case III.

[25] See note 21.

[26] S. 30, proviso (i), read with s. 31: see p. 146. But if interest is merely foregone, that fact does not prevent assessment on the basis of the preceding year's receipts: *Cull* v. *Cowcher* (1934), 18 Tax C. 449. Note the provision for retrospective assessment in s. 31 (1) (b).

the income from that source or addition is to be computed separately, in accordance with the provisions above summarised.[27]

A person who possesses in a year of assessment any source of income taxable or chargeable under Case III on the profits of the preceding year is liable to pay tax on that amount, although he derives no profits from that source during the year.[28] This provision does not apply to any source of income chargeable under rule 1 which a person ceases to possess during the year, because the amount is not to be computed according to the profits of any preceding period, but according to those of the year of assessment itself.[29] If a person has ceased to possess any source of income chargeable under Case III before the beginning of the year of assessment, he is not liable to any tax in that year, although he derived an income from it in the preceding year.[30]

The question what constitutes a separate source of income (which may arise under any of the above provisions) is illustrated by decisions given in regard to War Loan and Exchequer Bonds.[31]

Interest of Money—The tax extends under Case III to "any interest of money whether yearly or otherwise . . . or whether the same is received and payable half-yearly or at any shorter or more distant periods."[32] Other words make it immaterial whether the interest is payable in this country or not, and in what manner the liability to pay is created.[33] The rule which gives the payer the right to deduct tax upon interest paid out of taxable profits gives that right only in respect of "yearly interest,"[34] thus differing from the rule of Case III just cited; but where the payment is not made wholly out of taxable profits, the right to deduct tax applies to "any interest of money," and is not restricted to "yearly interest."[34]

Interest, other than yearly, paid out of taxable profits, is therefore taxed by direct assessment,[35] and not by deduction at the source. Again, if the power to deduct at the source is not

[27] S 30, proviso (ii) read with r. 2 (1) of Case III; applied to interest paid by registered societies: Act of 1923, s. 32 (2), see p. 569

[28] Act of 1926, s. 22, see p. 4.

[29] S 30, proviso (i)

[30] To this extent the effect of the decisions in *Brown* v *National Provident Institution*, [1921] 2 A. C 222, *Granger* v. *Maxwell*, [1926] 1 K. B. 430 (see pp. 210, 211), is unaltered by the passing of s. 22 of the Act of 1926: see p. 4

[31] See p. 211.

[32] Case III, r. 1 (a) see p. 479 As to interest paid by registered societies, see note [27].

[33] See p. 196, and General Rules, r. 19 (1), p. 490.

[34] See p. 196, and General Rules, r. 21, p. 490, *Michelham* v. *Michelham*, see p. 196.

[35] Sched. D. Misc. Rules, r 1, see p. 482; *Sweet* v. *Henderson* (1930), 58 S. L. R. 129; 7 Tax C. 646.

exercised, the recipient of the interest is nevertheless liable to be assessed directly.[36]

Tax is charged under Case III upon all interest, whether annual or not. Thus, a building society is taxable upon the interest received from its members though payable weekly.[37] Again, premiums paid on redemption of non-interest bonds are taxable as interest.[37a] The tax is charged on bank-deposit interest,[38] interest ordered to be paid in respect of an amount recoverable under a judgment,[39] interest which becomes payable by trustees in consequence of failure to account or of a breach of trust,[40] interest ordered by a rule of Court to be paid upon an established debt,[41] interest on damages included in a judgment,[41a] and interest payable under promissory notes to the administrator of a deceased moneylender, whose trade ceased on his death.[42] But interest included with damages in an award may be in truth a part of the damages, and, if so, is not taxable as interest.[43]

Interest guaranteed by a foreign Government to a railway company during the period of construction of the railway is taxable as a whole, even though a part of it must be devoted by the company to the redemption of its debenture capital;[44] interest payable during construction by contractors,[45] or by the railway company itself[46] is similarly taxable.

It has already been seen[47] that in the case of a company whose business is bound up with the holding of investments (such as an insurance office, or an investment corporation),

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[36] *Glamorgan Quarter Sessions* v *Wilson*, [1910] 1 K. B. 725. It was also decided in that case that Quarter Sessions as a compensation authority under the Licensing Acts are liable to assessment. On this point, see also *Matthews* v. *Cork C. C.*, [1910] 2 I. R. 251, 5 Tax C. 545, and see p. 102.

[37] *Leeds Benefit Building Society* v *Mallandaine*, [1897] 2 Q. B. 402. As to payments including instalments of principal, see *Sec of State for India* v. *Scoble*, p 194. See also *L.-A.* v. *Edinburgh Corpn.* (1903), p. 170.

[37a] *Davies* v. *Premier, etc Co., Ltd* (1945), 62 T L R 35; contrast, p. 218, note [5]

[38] *Glamorgan Quarter Sessions* v *Wilson*, above; *Matthews* v. *Cork C. C.*, above; *College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162. See *Goslings and Sharpe* v. *Blake* (p 187), as to the banker's right to deduct.

[39] *Schultze* v. *Bensted*, 1916 S. C. 188; 7 Tax C. 30; *Sweet* v. *Henderson*, p. 182.

[40] *I. R.* v. *Barnato* (1936), 20 Tax C. 455, *Barlow* v. *I. R.* (1937), 21 Tax C. 354.

[41] *Michelham* v *Michelham*, [1921] 1 Ch 705, see p. 196. Under R. S. C., Ord. LV, r. 63, the interest was payable from the date of the order establishing the debt.

[41a] Under the Law Reform Act, 1934, s 3; *Westminster Bank Ltd.* v. *Riches*, [1945] Ch. 387, where cases cited in note [43] were considered

[42] *Bennett* v *Ogston* (1930), 15 Tax C 374

[43] *I. R.* v. *Ballantine* (1924), 8 Tax C. 595. Cf. *In re National Bank of Wales*, [1899] 2 Ch. 629, 650; *Simpson* v *Maurice's Executors* (1929), 45 T. L. R. 581; 14 Tax C. 580, at 602, 606, and contrast cases cited above, also *Spence* v. *I. R.*, p. 303.

[44] *Blake* v. *Imperial Brazilian Ry.* (1884), 2 Tax C. 58, *Nizam State Ry.* v. *Wyatt* (1890), 24 Q. B. D. 548, in the latter case the annual payment was called an "annuity." See also *Sec of State* v. *Scoble*, p. 194. A peculiar case relating to arrears of guaranteed interest will be found in *Pretoria Pietersburg Ry.* v. *Elwood* (1908), 6 Tax C. 508, see p. 108 These cases were considered in *Seaham Harbour Dock Co.* v. *Crook* (1930), 47 T. L. R. 23, see p. 140.

[45] *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239, see p. 114; *Surbiton U. D. C.* v. *Callender Cable Co.*, see p. 187.

[46] *L.-A.* v. *Forth Bridge Ry. Co.* (1890), 28 S. L. R. 576; 3 Tax C. 1.

[47] See pp. 94, 95. As to deduction for management expenses, see p. 213.

the Crown has an option either to tax the company on its profits under Case I, or on the income derived from its investments under Case III, Case IV, or Case V; the Crown naturally levies the tax according to that method which yields the larger amount. It is entitled to levy the tax on any interest received by such a company, where tax on that interest has not been deducted by the payer.[48] A county council was under a similar liability to pay tax on interest received from other local authorities to which it had made loans, although those loans were made out of money which the county council had itself borrowed and upon which it had to pay interest.[49]

Interest payable out of local rates is taxable; but a local authority is no longer liable to account for tax deducted against interest paid upon a loan raised upon the security of its rates for the purpose of erecting municipal buildings, to the extent to which it pays tax under Schedule A[51] on the annual value of the buildings.[52]

Interest, dividends, or other annual payments payable out of or in respect of the stocks funds, shares or securities of any foreign or Colonial company, society, adventure or concern, and entrusted to a person in the United Kingdom for payment to another person in this country, are charged by the Special Commissioners in the hands of the person who is entrusted with the payment. There is no relief from this charge by reason of any portion of the dividends being paid out of profits already taxed in this country because the company carries on business in the United Kingdom, or receives dividends or interest chargeable here with tax.[53] The agent pays the tax, and deducts it in paying the interest, etc.,[54] but if the owner, who is entitled to the interest, is not resident in the United Kingdom, the tax will be allowed or repaid to him.[55] Where such interest, dividends, etc., are received or realised by means of

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[48] *Clerical, Medical and General, etc.* v. *Carter* (1889), 22 Q. B. D. 444; *Revell* v. *Edenburgh Life, etc* (1906), 5 Tax C. 221, *see* p. 94.

[49] *London County Council* v. *Grove* (1896), 3 Tax C. 508. But *see* now No. 2 Act of 1945, s. 21, p. 199.

[51] See p. 48, and preceding note.

[52] See *Aberdeen Commrs. of Supply* v. *Russell* (1890), 17 R. 942, 2 Tax C. 643; *Att.-Gen.* v. *L. C. C.*, [1907] A. C. 131, p. 200.

[53] *Gilbertson* v. *Fergusson* (1881), 7 Q. B. D. 562, after being limited in *Barnes* v. *Hutchinson*, see p. 226, has now been overruled, *Canadian Eagle Oil Co., Ltd.* v. *The King*; *Selection Trust, Ltd* v. *Jarrett* (1945), 61 T. L. R. 577 (H. L.).

[54] Sched. D, Misc. Rules, r. 7 (see p. 451), read with the second set of rules in Sched. C (see p. 438), *see* the opinion of Lord SIMON, L.C., in the case last cited and see Chap. 4. An appeal on the question of residence is given by Act of 1924, s. 27, see sub-s. 3 (c) (ii), p. 523. If the securities, etc. are vested in an administrator or custodian of enemy property, such vesting is to be disregarded for the purpose of the allowance. Act of 1925, s. 20, *see* p. 527.

[55] *Hughes* v. *Bank of New Zealand*; but the scope of this exemption is much limited by the Act of 1940, s. 21 (1): see p. 62, note [1].

coupons,[56] or funding bonds are issued in respect of such interest,[57] tax is made chargeable in accordance with this rule by provisions of the Act of 1938. If the securities or the stocks or shares are " in any place out of the United Kingdom," the charge will be made under Case IV or Case V, whichever is applicable.[58] When, however, income formerly chargeable under either of those Cases becomes payable through an agent in this country, the income for the year of assessment up to the date of the change is to be charged under the relevant Case for the profits from April 6 to that date; the income for the remainder of the year being taxed by deduction under rule 7.[59] Where income ceases to be payable in this country, and becomes chargeable under Case IV or Case V, the converse arrangement is made.[60]

The receipt of " funding bonds " in respect of a liability to pay interest is treated as a receipt of interest; and in case of certain transactions, interest, dividends and annuities may be treated as income of a person other than the actual recipient.[61]

Interest on unpaid estate duty cannot be excluded in arriving at the amount of interest assessable;[62] nor is a lunacy percentage deductible.[63] Interest on contributions paid in advance under the War Damage Acts, 1941 and 1943, is allowed without deduction of tax: but is chargeable by assessment under Case III.[64]

Yearly Interest paid out of Taxable Profits : Deduction of Tax—In computing the profits of a trade or profession, a deduction for any annual interest, annuity or other annual payment payable out of profits, is prohibited:[65] there is a similar prohibition with regard to profits generally.[66] But where yearly interest is paid wholly out of taxable profits (either as a charge or reservation imposed by deed or will or otherwise, or as a personal debt or contractual obligation), the payer is entitled to deduct the tax on the interest in making the payment, and to retain the tax for his own benefit, because

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[56] Act of 1938, s. 23 (5), see p. 680.

[57] S. 25: these sections are summarised on pp. 65, 66 [58] See Chap 9.

[59] Act of 1926, s. 30, proviso (iii), read with proviso (i) and with s. 31 (1) (a): see pp. 531 532

[60] *Ibid.*, s. 30, proviso (iv), read with proviso (iii) and with s. 30 (1), proviso (b).

[61] Act of 1938, s. 25, Act of 1937, s. 12; Act of 1938, s. 24: see pp. 65—67.

[62] *Inverclyde's (Lord) Trustees* v. *Millar*, [1924] A. C. 590: see p. 187. Contrast *Monks* v. *Fox's Executors*, p. 212.

[63] *Committee of A. B.* v. *Simpson* (1928), 14 Tax C. 29. *I. R.* v. *Sneath*, [1932] 2 K. B. 362, see p. 307.

[64] War Damage Act, 1941, s. 32 (3), 1943, s. 62 (5), see p. 674.

[65] Sched. D, Cases I and II, r. 3 (1), see p. 118; this rule applies to quarries and other concerns, see p. 136. Relief is allowed to registered societies: Act of 1933, s. 32 (4), see p. 155.

[66] Expressed in slightly different language: General Rules, r. 19 (1), see p. 490; an "annual payment" in this rule and r. 3 (1), above, need not be *ejusdem generis* with interest. Cf. *R.* v. *Special Commrs., Ex p. Shaftesbury Homes*, [1923] 1 K. B. 285, see p. 285.

he has already been assessed upon the profits out of which the payment is made; no separate assessment is made upon the payee in respect of the interest. The interest as between payer and payee is treated as having been paid in full.[67] The amount to be deducted is calculated at the standard rate for the year in which the interest payable becomes due.[68] Any agreement for payment in full without allowing such deduction is void.[69]

The right to deduct tax on interest paid out of taxable profits applies to yearly interest only; and interest for shorter periods than a year which is so paid is assessable only in the hands of the payee;[70] but interest may be "yearly interest," although it is payable half-yearly or at any shorter or more distant periods.[71]

"Yearly interest" means interest which may become payable at a future date, and is calculable by periods of not less than a year, even though the obligation to pay it may cease before the year is out.[72] Tax is, therefore, deductible on paying interest on the purchase money of real estate after the date fixed for completion,[73] and on paying interest due under a mortgage deed, and the interest due on arrears of such interest, where these are specified in the deed,[74] as well as on paying compound interest due under a mortgage, where the deed provides in general language for payment of compound interest with yearly rests;[75] and where interest is charged against a landowner by a firm of solicitors in Scotland, who act as his law agents, and who satisfy advances made to him out of the income and capital moneys which they collect on his behalf, the transactions extending over a series of years, but the amount of the advances as well as the rate of interest fluctuating from time to time, the interest charged is nevertheless yearly interest and tax is rightly deducted.[76]

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[67] General Rules, r. 19 (1), see p. 490, this rule corresponds with s. 40 of the Income Tax Act, 1853. As to deduction of tax on payment of interest out of untaxed profits, see p. 196, on payment of rent, see pp. 43 *sqq.*, 52. Tender of mortgage interest less income tax is proper legal tender *Graham* v. *Seal* (1919), 88 L. J. (Ch.) 31. See *Hollis* v. *Wingfield*, [1940] 1 Ch. 336, *as to rights of a mortgagee in possession*. See p. 154, as to registered societies.

[68] Act of 1927, s. 39 (1), see p. 542, as to the "standard rate," see p. 2, and see *In re Sebright*, p. 193.

[69] General Rules, r. 23 (2), see p. 492, and see p. 46.

[70] *Leeds, etc. Building Soc.* v. *Mallandaine*, see p. 183. [71] R. 19 (1).

[72] *In re Craven*, [1907] 2 Ch. 448, *per* WARRINGTON, J., at p. 457, see decisions on similar points with regard to annuities and other annual payments, p. 190. The features which differentiate yearly from other interest are indicated by Lord ANDERSON in *I. R.* v. *Hay* (1924), 8 L. T. 470; 8 Tax C. 636.

[73] *Bebb* v. *Bunny* (1854), 1 K. & J. 216, followed in *Barlow* v. *I. R.*: see p. 183.

[74] *In re Craven*, above, but no deduction is allowable in respect of repayments of principal: *Ex p. Wythes* (1885), 53 L. T. 492. Deduction may be made on payment of arrears: *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100: see p. 201.

[75] *In re Morris*, [1922] 1 Ch. 126. [76] *I. R.* v. *Hay*, above.

On the other hand, interest upon short loans by bankers to customers for periods less than a year (*e.g.*, for three months) which are not intended to be continued for a long period, is not yearly interest within this rule; the bank's customers cannot deduct tax in paying the interest, and the interest is included in the profits of the bank on which it is liable to pay tax.[77] Where the borrower, however, has mortgaged a certain security with his banker for a fixed sum, he may deduct the tax on paying interest;[78] for here the loan is intended to continue and the interest is not only calculable by the year, but is likely to remain payable after the year is over. There is nothing intended to be permanent about a judgment debt, and in paying interest on that, the tax is not deductible,[79] nor in paying interest on paving expenses under the Public Health Acts.[80] Interest allowed by a bank to a customer upon his fluctuating daily balances is not " yearly interest."[81]

Tax is deductible against payments of interest by contractors during construction of works.[82]

According to the practice of the Court of Chancery, the deduction was not allowed in respect of interest on purchase-money paid into Court;[83] but was allowed on the payment of interest on a bill of exchange in an administration action.[84] The Scottish Courts have refused to allow any deduction of tax on interest due under a decree of reduction of a sale of shares in a company.[85]

Tax cannot be deducted in paying interest on unpaid estate duty.[86] Executors may deduct tax in paying interest on a legacy which has remained unpaid for more than a year after the testator's death.[87]

Interest on Advances by Banks, Stockbrokers and Discount Houses.—Where interest is payable in the United Kingdom on an advance made by a bank carrying on a *bona fide* banking business in this country, and the interest is paid " out of profits

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[77] *Goslings and Sharpe* v. *Blake* (1889), 23 Q. B. D. 324, the case is different where the interest on short loans is not wholly payable out of taxed profits: *L.-A.* v. *Edinburgh Corpn* (1903), 6 F. 1: see p. 196.

[78] *Moser* v. *Salt* (1862), 32 L. J. Ch. 756.

[79] *In re Cooper*, [1911] 2 K. B. 550, such interest is, however, subject to direct assessment, see p. 183.

[80] *Mayor, etc. of Gateshead* v. *Lumsden*, [1914] 2 K. B. 883.

[81] *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381, see p. 186, r. 19 (1) and the provisions for deduction of tax were not in question in that case.

[82] *Surbiton U. D. C.* v. *Callender Cable Co.* (1910), 8 L. G. R. 244, see p. 183.

[83] *Holroyd* v. *Wyatt* (1847), 1 De G. & S. 125. *Dawson* v. *Dawson* (1847), 11 Jur. 984; *Humble* v. *Humble* (1849), 12 Beav. 43.

[84] *Dunning* v. *Henderson* (1850), 3 De G. & S. 702.

[85] *Dunn* v. *Chambers* (1898), 25 R. 688.

[86] Finance Act, 1896 (59 & 60 Vict. c. 28), s. 18 (1). *Inverclyde's (Lord) Trustees* v. *Millar*, [1924] A. C. 580.

[87] *Hamilton* v. *Lunaker*, [1923] 1 Ir. R. 104.

or gains brought into charge."[88] but the person who has paid the interest has done so without deduction of tax, he is entitled to repayment of the tax upon the interest so paid.[89] This provision, while it applies in the more common cases where interest on advances made by banks (such as "short loans" and "overdrafts") is not yearly interest and no deduction is admissible,[90] applies also even if the interest is yearly interest, where the payer has not in fact deducted tax.[91] The relief given is confined to the principal debtor and cannot be claimed by a guarantor.[92] Where the interest is added to the principal debt by the bank, and no actual payment is made by the debtor, the interest cannot be said to have been "paid," and the provision does not apply.[93] If the interest has been debited as an expense before arriving at the profits of a trade, etc., on which the payer is assessed, he cannot claim repayment.[94] It has been held to be necessary that the interest should be included in the returns of the payee; but this decision reads into sub-sect. (1), a proviso which appears only in sub-sect. (2).[95] The repayment must be claimed, within six years after the end of the year to which it refers,[96] in the prescribed form, an appeal lies to the Special Commissioners.[97]

Where interest other than yearly interest[98] is paid in the United Kingdom on an advance made by a person *bona fide* carrying on business as a member of a stock exchange or the business of a discount house in this country, and is paid "out of profits or gains brought into charge,"[99] the payer is entitled to a like repayment: the Commissioners must be satisfied that the interest has been or will be included in the payee's income tax return: it must have been paid without deduction.[1] Claims must be made, and an appeal lies, as above stated.[2]

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[88] As to the meaning of this expression, see *London County Council* v. *Att. Gen.*, [1901] A. C. 26, and other cases cited pp. 198–202. In *Metropolitan Ry.* v. *I. R.*, [1937] A. C. 77, which arose under s. 36 (1), the facts were similar to those in *Central London Ry.* v. *I. R.*, *ibid.*, see p. 176, the two cases were decided together and in the same way.

[89] Act of 1918, s. 36 (1), see p. 382, and see *I. R.* v. *Hay* (1924), S. L. T. 470, 8 Tax C. 636, p. 196. Discount on promissory notes has been found not to be "interest" for this purpose. *Torrens* v. *I. R.* (1933), 18 Tax C. 262.

[90] *Maude* v. *I. R.*, [1940] 1 K. B. 548. See *Goslings and Sharpe* v. *Blake*, p. 187.

[91] See *Mouse* v. *Salt*, p. 187, the words "not being yearly interest" in sub-s. 2 do not appear in sub-s. 1.

[92] *Holder* v. *I. R.*, [1932] A. C. 624.

[93] *Paton (as Fenton's Trustee)* v. *I. R.*, [1938] A. C. 341.

[94] *W. H. Muller, Ltd.* v. *I. R.* (1928), 7 A. T. C. 375.

[95] *Webb* v. *I. R.* (1943), 169 L. T. 380, no such proviso appeared in s. 22 of the Act of 1915, which was the precursor of s. 36 (1).

[96] Act of 1918, s. 41, as amended by s. 30 (1) of the Act of 1923, see p. 416.

[97] Act of 1925, s. 19 (1) (b), see p. 526; notice of appeal must be given within twenty-one days of the notice of the decision on the claim: s. 19 (2).

[98] See *Goslings and Sharpe* v. *Blake*, and the cases cited therewith, p. 187.

[99] See note [88], above.

[1] Act of 1918, s. 36 (2).

[2] See notes [98] and [97].

Annuities Generally—"Any annuity or other annual payment" is assessable under Case III of Schedule D;[3] but annuities, of the nature of interest on investments, paid out of public revenues are taxed under Schedule C,[4] and annuities of the nature of pensions are in general taxed under Schedule E.[5] An annuity paid out of a superannuation fund to a person residing in the United Kingdom shall, if the Commissioners of Inland Revenue so direct, be charged under Schedule E on the annuitant, by the "Pay as You Earn" method.[6]

Annuities paid by way of alimony under a deed of separation, and so forth, are charged under Case III of Schedule D.[7] as well as annuities payable under a will[8] or settlement,[9] or in accordance with the terms of compromise of a probate action.[10] So also (except as below) is alimony payable under an order of the Divorce Division, unless the order directs it to be calculated free of income tax, or to be paid as part of the husband's income after tax has been deducted.[11] Other important kinds of annuity taxed under this Case are those which are paid as the profits of investments (as where annuities are granted by an insurance or investment company[12]), and those which are paid as part of the consideration for purchase of an undertaking, and so on.[13]

"Small maintenance payments," under an order of any Court in the United Kingdom to pay not more than £2 a week in the case of a woman or £1 a week in the case of a person under sixteen, are to be paid without deduction, but are charged under Case III in the hands of the recipient. The payer may deduct them in computing his total income.[14]

Where an annuity or other annual payment is paid out of taxable profits, the payer has the same right to deduct and retain

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[3] Sched. D, Case III, r. 1 (a), see p. 479.
[4] See p. 62.
[5] See Chap. 11.
[6] Finance Act, 1921, s. 32 (2), as amended, see p. 506, and as to that method, see pp. 250—254.
[7] *Warren* v. *Warren* (1895), 43 W. R. 490, *Dalrymple* v. *Dalrymple* (1902), 4 F. 545; *In re Barry's Trusts*, [1906] 1 Ch. 768, 2 Ch. 358, *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 398, *Blount* v. *Blount*, [1916] 1 K. B. 230, *In re Janes' Settlement*, see p. 165, *In re Shaw*, [1918] P. 47; *In re Hatch*, [1919] 1 Ch. 351, *Bayley* v. *Bayley*, below; and cases cited pp. 206—208.
[8] *In re Cooper*, [1917] W. N. 385, *Hunter's Trees* v. *Mitchell*, 1930 S. C. 978.
[9] *Baxendale* v. *Murphy*, [1924] 2 K. B. 494, see p. 96, *In re Portman* (*Viscount*), [1924] 2 Ch. 6. This includes a payment to a trustee as such, *Hearn* v. *Morgan*, [1945] 2 All E. R. 480, but not an annual payment to a solicitor-trustee for professional work: *Jones* v. *Wright* (1927), 44 T. L. R. 128, see p. 96.
[10] *In re Shaw*, [1918] P. 47, above.
[11] *Smith* v. *Smith*, [1923] P. 191, see p. 191, see *Frankfort* v. *Frankfort* (1845), 4 Notes of Cases, 280, as to alimony "free of tax," see *Spilsbury* v. *Spofforth* (1937), 21 Tax C. 247, p. 306.
[12] See *Gresham Life, etc.* v. *Styles*, [1892] A. C. 309, p. 118. A sickness payment by a mutual insurance society is within r. 1. *Forsyth* v. *Thompson*, [1940] 2 K. B. 366.
[13] Thus the payments made in *Morning Post, Ltd* v. *George* (1940), 23 Tax C. 514 (see p. 70), were properly charged under Case III.
[14] Act of 1944, s. 25, see p. 686, and see p. 307.

tax as he has with regard to yearly interest,[15] even though he has not in fact paid tax on those profits;[16] where it is not wholly so paid, he is bound to deduct tax and account for it to the Crown.[17] Every agreement to pay in full without deduction is void.[18] A voluntary payment, such as an allowance made by a father to a son, does not make the recipient taxable;[19] but if the allowance is paid under a deed or contract, such as a marriage contract in Scotland, the father has a right to deduct tax, and if he does not in fact do so, the amount of the tax is a gift to the son.[20]

Life insurance premiums are not subject to assessment as annual payments, and income tax is not deductible on paying them.[21]

The nature of various so-called "annuities" has been considered by the Courts both in relation to the question whether the annuity is directly assessable to the tax, and to the question whether the payer is entitled to deduct tax against the recipient. The same considerations arise with regard to both questions, and it may be said broadly that in so far as a so-called "annuity" represents the payment of capital by instalments it is not within the purview of the income tax, either for purposes of direct assessment or of deduction at the source.[22] It is not conclusive that the payment is called an annuity in the agreement between the payer and the recipient; the real nature of the transaction must be looked at.[23]

A local authority were held to be directly chargeable for annual payments made to them by a navigation authority as compensation for delay in constructing a quay.[24] Again, an allowance paid under a will or a settlement[25] or a deed of separation or an order of the Divorce Division may be an "annuity or annual payment," although it may be made up (in accordance with the provisions of the will, deed or order) of fixed payments of so much each month,[26] or so much each

[15] See pp. 185—187, and General Rules, r 19 (1), p. 490, as to the amount deductible, see Act of 1927, s 39 (1), p 542, and see p. 193

[16] *Bayley* v *Bayley*, [1922] 2 K. B. 227.

[17] See p 196.

[18] General Rules, r 23 (2); this rule is more fully considered, p. 206.

[19] See *Smith* v *Smith*, above, [1933] P. 197, 202, 204.

[20] *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, see p. 197 As to payments made under revocable and other dispositions, see pp. 308 *sqq*.

[21] *Howe* (*Earl*) v. *I. R.*, [1919] 2 K. B. 336, see p 207.

[22] *Oswald* v. *Kirkcaldy Magistrates*, 1919 S. C. 147, affords a simple illustration of this principle; the payments were held to be instalments of the price of a sewer.

[23] *Nizam State Ry.* v. *Wyatt* (1890), 24 Q. B. D. 548, see p. 183; *Sec. of State for India* v. *Scoble*, see p. 194. The *dicta* to the contrary in *Foley* v. *Fletcher* (below) were overruled in the latter case.

[24] *Renfrew Magistrates* v *I. R.*, 1934 S. C. 468; 19 Tax C. 13.

[25] This applies although the annuity is paid by means of advances out of capital under the terms of the will: *Williamson* v. *Ough*, [1936] A. C. 384; *Kelaile* v. *I. R.* (1936), 20 Tax C. 700. See also *Bowers* v. *I. R.* (1937), 21 Tax C. 93 (C. A.), p. 308.

[26] *In re Cooper* [1917] W. N. 385; *cf. In re Owens*; *Bebb* v. *Bunny*, p. 186.

week.[27] The same principle applies to payments made under a magistrate's maintenance order.[28]

No deduction of tax may be made in paying any instalment of an annuity under the Tithe Act, 1936.[29]

Annuities, etc., payable by Institutions in India—Any annuities, pensions or other annual sums payable out of the funds of any institution in India to any person in the United Kingdom through some agent in the United Kingdom are chargeable by the Special Commissioners under Schedule D,[30] but certain rules in Schedule C are applied;[31] that is to say, the person entrusted with making the payment of the annuities, etc., pays the tax and deducts it against the annuitants; and if the person entitled to the annuity, etc., is not resident in the United Kingdom the tax is allowed or repaid to him.[32] The provisions for assessment where such an annuity, etc., becomes, or ceases to be, payable through an agent in this country and taxable by deduction under rule 7 are indicated above.[33] If any such payment is received or realised by means of coupons, the provisions of section 23 of the Act of 1938 are applicable.[34]

Annuities Payable under Wills : Deduction of Tax—The rule which avoids agreements to pay annuities or interest without deduction of tax[35] makes no mention of wills. This omission is deliberate, and is due to the fact that under a will the parties "take their respective rights from the bounty or the forbearance of the testator."[36]

A direction in a will to pay an annuity free of income tax must therefore be carried out,[37] and "it is simply a matter of construction . . . whether the testator has given the annuity together with a sum equal to the income tax to the annuitant, so that the annuitant may receive the annuity free of tax, or has simply given an annuity and left the annuitant to bear his own income tax."[38] The rules bearing on this matter have

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[27] *In re Janes' Settlement*, [1918] 2 Ch. 54; *Smith* v. *Smith*, [1923] P. 191, see p. 189; *Eadie* v *I. R.*, [1924] 2 K. B. 198, see p. 274. See note [14] above.

[28] *Clack* v. *Clack*, [1935] 2 K. B. 109.

[29] S. 13 (5), see p. 590. As to sub-s. 6, see p. 32, Chap. 2.

[30] Sched. D, Misc. Rules, r. 7, see p. 483. these are excepted from the transfer of pensions to Sched. E by Finance Act, 1922, s. 18 (1), see p. 240.

[31] See Chap. 4.

[32] Sched. C, General Rules, r 2 (d), see p. 469; an appeal on the question of residence is given by Act of 1924, s. 27 (3) (c), see p. 523.

[33] See pp. 184, 185.

[34] Act of 1938, s. 23 (5) (b). So also may be those of s. 25 as to funding bonds, if the occasion arises, as well as those of s. 12 of the Act of 1937 and s. 24 of the Act of 1938. See pp. 65–67.

[35] General Rules, r. 23 (2), see pp. 206 207

[36] *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41, *per* ERLE, C.J., at 44. see p. 46.

[37] *Lovat (Lord)* v. *Leeds (Duchess)* (1862), 31 L. J. Ch. 503, see p. 46; *Festing* v. *Taylor*, above; *In re Hurst*, see p. 192. But see "Tax-free payments," p. 208.

[38] *In re Saillard*, [1917] 2 Ch. 401, *per* SWINFEN EADY, L.J., at 402.

been formulated as follows:[39] (1) The annuity is not payable free of tax unless there is a direction in the will to that effect; (2) it makes no difference to the application of that rule if in fact the annuity is paid out of income from which tax has been deducted at the source before it reaches the trustees;[40] (3) it is not a sufficient direction to use the words " a clear annuity "; or (4) to give an annuity " free of all deductions "; (5) if a testator desires to free an annuitant from the payment of income tax, he should use the words " free of income tax," and if he does not desire to free him from the payment of surtax, he should add the words " but not free of sur-tax."[41]

Thus, a devise in general words, *e.g.*, of a " clear annuity,"[42] or of an annuity " free of all duties,"[43] " free from legacy duty and other deductions,"[44] or even " free from all deductions and abatements whatsoever,"[45] is not enough to give the annuity free of income tax; the general words if they are used, must be qualified in some way so as to show that the testator intended this tax to be borne by the trustees and not by the annuitant.[47] But his intention may be gathered from other parts of the will,[48] and, where the devise is contained in a codicil, from the will itself;[49] if the words used include the word " taxes," this may be taken to indicate that the annuitant is intended to be free of the income tax.[50]

General Rules 19 and 21 are the only enactments which authorise the payer of an annuity to " deduct " income tax, and they use that word. Nevertheless, it has now been laid down that " income tax is not a deduction "; and draftsmen should note that " if a testator means a specified annuity to be received clear of income tax he should say so in express terms."[51]

So also, where a question as to the validity of the will has

[39] By Morton, J., in *In re Skinner*, [1942] 1 Ch. 82, citing cases referred to in the following notes.

[40] *In re Cass's Settlement*, see p. 206.

[41] *In re Beckitt*, [1932] 2 Ch. 144. As to surtax, see p. 350.

[42] *In re Loveless*, [1918] 2 Ch. 1; *In re Hurst*, see p. 191.

[43] *In re Scollard*, [1917] 2 Ch. 401, where many of the earlier cases will be found cited.

[44] *Sadler* v. *Ruckards* (1858), 4 K. & J. 302.

[45] *Wall* v. *Wall* (1847), 15 Sim. 513. *Lethbridge* v. *Thurlow* (1851), 15 Beav. 334; *Gleadow* v. *Leetham* (1882), 22 Ch. D. 269. *In re Wells*, [1940] Ch. 411, where *In re Coulshaw*, below, was not followed.

[47] As in *Festing* v. *Taylor*, above. *Lovat* (*Lord*) v. *Leeds* (*Duchess*), above; *In re Bannerman's Estate* (1882), 21 Ch. D. 105; *In re Hurst* (1941), 58 T. L. R. 58. See *Booth* v. *Booth*, p. 297, note [84], for language now commonly employed for this purpose.

[48] *Turner* v. *Mullineux* (1861), 1 J. & H. 334.

[49] *In re Buckle*, [1894] 1 Ch. 286.

[50] *In re Shrewsbury Estate Acts*, [1924] 1 Ch. 315, where the words (in a private Act and a jointure deed made thereunder) were, " clear of all deductions whatsoever whether for taxes or otherwise ", followed where the words " free of all deductions whatsoever " could apply to nothing but income tax: *In re Coulshaw*, [1939] 1 Ch. 654. See *Shrewsbury* (*Countess*) v. *I. R.*, [1936] 2 K. B. 582, p. 305; contrast *In re Best*, [1942] 1 Ch. 77 (a marriage settlement), p. 207.

[51] *In re Hooper* (1943), 60 T. L. R. 161 (a will). *In re Coulshaw* (above) was not followed.

been settled by the annuitant agreeing to take a smaller annuity than the will would give him, the direction of the will to pay the annuity free of tax will apply to the reduced annuity; but if there is any further agreement securing the reduced annuity, so that it can no longer be regarded as payable under the will alone, rule 23 (2) of the General Rules applies, and the income tax is deductible.[52]

If, however, the will does not give the annuity free of tax, and if there are no words from which it can fairly be inferred that a sum equal to the tax is also given to the annuitants, the trustee is entitled to deduct income tax in paying the annuity, and commits a breach of trust if he fails to do so.[53]

Unless the annuity is payable free of tax, the trustee deducts the income tax at the standard rate; if it is paid out of taxed profits (although paid in arrear, because no funds were previously available), the rate of deduction is the standard rate for the year in which it became due;[54] if it is not wholly paid thereout, the rate at the time of payment prevails.[55] If it is payable free of tax, and the annuitant is entitled to any of the reliefs by way of deduction from the amount of tax payable,[56] and obtains repayment[57] of tax on that account from the income tax authorities, he is liable to hand back to the trustee a proportion of the sum repaid, equivalent to the proportion which the annuity bears to the whole of the annuitant's assessable income; the amount handed back goes into the residuary estate;[58] this obligation is modified where only twenty twenty-ninths of the fixed amount of the annuity is payable.[59] If, however, the annuity is given in such words that a fixed clear yearly sum is to be paid after deduction of income tax at the standard rate, the annuitant has not to account for any part of the relief.[60]

Where tax-free annuities are valued under an order of Court with a view to the payment of their capital value to the annuitants, the rates of tax and relief to be applied are those in force at the date of the order.[61]

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[52] *In re Gretton's Indenture*, [1923] 1 Ch. 77, see p. 206.

[53] *In re Sharp*, [1906] 1 Ch. 793, a trustee who is also an annuitant and has failed to debit himself with tax cannot plead the Statutes of Limitation in respect of any money so retained by himself. As to an annuity satisfied out of capital, see *Williamson* v. *Ough*, p. 190, note [84].

[54] *In re Sebright*, [1944] 1 Ch. 287

[55] See p. 198, note [99].

[56] See Act of 1927, s. 40 (1), pp. 8 *sqq.*

[57] See pp. 362—363.

[58] *In re Pettit*, [1922] 2 Ch. 765, followed, *In re Kingcome*, [1936] Ch. 566; *In re Maclennan*, [1939] Ch. 750 (C. A.), *In re Ewes*, [1939] Ch. 969, *In re Tatham*, [1945] Ch. 34, *In re Williams*, *ibid.* 320, *In re Bates* (1945), 61 T. L. R. 52. The Court of Session took a different view in *Richmond's Trustees* v. *Richmond*, 1935 S. C. 585 see p. 350, and *Rowan's Trustees* v. *Rowan*, 1940 S. C. 30; but applied a similar principle in *Turner's Trustees* v. *Turner*, see p. 209, where the relevant words are quoted. The amount of reliefs payable to an annuitant is not affected, *I. R.* v. *Cook*, [1945] 2 All E. R. 377 (H. L.); see pp. 8, 11.

[59] Act of 1941, s. 25 (4), see p. 209. The decision on post-war credits in *Re Tatham* above, seems to disregard this provision, but was followed in *Re Bates*, above.

[60] *In re Jones*, [1933] Ch. 842, distinguished in *Re Maclennan* and in *I. R.* v. *Cook*, above.

[61] *In re Tweed*, [1941] Ch. 141, and see *In re Rothermere*, [1945] K. B. 72.

Instalments of Capital are not Annuities—If there is a debt owing and it is agreed that it shall be paid by annual instalments, those instalments are not "annuities or other annual payments," and the provisions for deduction of tax in making payment do not apply.[62] Nor do these provisions become applicable because the debt and the obligation to pay the instalments are created by the same instrument.[63] Thus, upon a sale of minerals for a definite fixed sum which is to be paid by instalments spread over a term of years, the purchasers cannot deduct tax on the instalments, because these are in the nature of capital and not of interest.[64] But if such instalments include payments of interest as well as of principal, they are severable; and in the case of a railway undertaking purchased by the Government of India for what was called an annuity, payable half-yearly for forty-nine years, each payment including both an instalment of the purchase price and interest on the portion of the purchase price remaining unpaid, it was held that the payer could not deduct the tax on that portion which represented an instalment of the purchase price,[65] though he might deduct tax in paying the remainder. In the last-mentioned case the Government of India were enabled by a previous contract to purchase the railway, and the arrangement for payment by instalments was made when the option to purchase had been exercised; but the same principle applies where the method of payment is itself a term of the bargain; an Act of Parliament stating the method by which the instalments have been calculated is not necessarily conclusive as to what part of each represents capital and what part interest.[66] In the realisation of securities on which the principal and interest of debentures are secured, income tax is payable on that part of the proceeds which represents interest; but the debenture holders need not therefore make an election so as to increase this portion and with it the amount of income tax payable.[67] Annual payments made under an "educational policy" by an insurance company for a term of years, and calculated so as to return the premiums paid with compound interest—the policy also providing that in the event of the child's death the premiums paid should be returned without

[62] *I.e.*, General Rules 19 and 21, see pp. 185 *sqq.*; *Dott* v. *Brown* (1936), 154 L. T. 484.

[63] *Chadwick* v. *Pearl Life, etc.*, [1905] 2 K. B. 507, 514.

[64] *Foley* v. *Fletcher* (1858), 28 L. J. Ex. 100; in *Taylor* v. *Evans* (1856), 25 L. J. Ex. 269, it had already been held that such instalments were not "rent," and that there was no right to deduct tax against them. Cf. also *Boyce* v. *Whitwick Colliery, Ltd.* (1934), 18 Tax C. 655, p. 106; *I. R.* v. *Ramsay*, *I. R.* v. *Hogarth*, pp. 306—307.

[65] *Secretary of State for India* v. *Scoble*, [1903] 1 K. B. 494; [1903] A. C. 299. So where the capital sum was the price of taking over private roads: *Goole Corporation* v *Aire and Calder Trees.* (1942), 58 T. L. R. 253. Cf. *Beck* v. *de Walden*, p. 227.

[66] *East Indian Ry.* v. *Sec. of State for India* [1905] 2 K. B. 413; see also *Same* v. *Same* (1924), 40 T. L. R. 241.

[67] *Smith* v. *Law Guarantee, etc.*, [1904] 2 Ch. 569, *In re Calgary and Medicine Hat Land Co., Ltd.*, [1909] 2 Ch. 652.

interest—are repayments of capital except so far as they include interest, and are not annuities.[68] But where, in consideration of a single payment, the company is bound to pay a fixed annual sum to the assured for his life, and thereafter to a named beneficiary until the sum received by the company is exhausted, the payments received by that beneficiary are taxable as annuities.[69]

It cannot, on the other hand, be said generally that wherever a contract of purchase stipulates for annual payments, those payments are not of the nature of annuities. Where the agreement between the parties involves no obligation to pay a definite sum, the annual payments are taxable, and the payer is entitled to deduct the tax.[70] This principle was well exemplified where a leasehold interest was assigned (in addition to a premium) for a series of yearly sums payable quarterly throughout the unexpired term, each of which sums was exactly equal to an annual profit rental previously enjoyed by the assignors: the assignees were held entitled to deduct tax on these sums.[71] In another case, an agreement to pay annually for a term of years a percentage of gross receipts in consideration of the sale of a secret process (when no lump sum had been fixed as the price) entitled the payers to deduct tax on the payments, although the recipients were foreigners not resident in this country.[72] A fixed sum per annum payable for a fixed period by the trustees of a deceased partner in respect of goodwill, use of the firm's name, and so on, was held to be an annual payment and not an instalment of capital.[73] And so were sums paid under an agreement to pay a percentage of excess receipts in compensation for cancelling a service agreement.[74]

Sums paid by the trustees of a will to the heir-at-law in heritage pending the death of a third party are income, and not capital, payments.[75] But a share of residue paid to an annuitant where the estate is insufficient to meet the annuity, is a capital payment, although made before the insufficiency was ascertained.[76]

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[68] *Perrin* v. *Dickson*, [1930] 1 K. B. 107 (C. A.); some doubt was cast on this decision in the case next cited.

[69] *Sothern-Smith* v. *Clancy*, [1941] 1 K. B. 276 (C. A.).

[70] *Chadwick* v. *Pearl Life, etc.*, [1905] 2 K. B. 507, see p 195; *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, see p. 115.

[71] *Chadwick* v. *Pearl Life, etc.*, above. Contrast *Ainley* v. *Edens*, p. 126, note [67].

[72] *Delage* v. *Nugget Polish Co., Ltd*, above. Cf. *Jones* v. *I. R.*, p. 177, and *International Combustion, Ltd.* v. *I. R.*, p. 198, note [4].

[73] *Mackintosh* v. *I. R.* (1928), 14 Tax C. 15. Tax had been deducted in making the payments, which were held to form part of the beneficiary's total income for super-tax purposes: see p. 305.

[74] *Asher* v. *London Film Productions, Ltd.*, [1944] 1 K. B 133, see p. 96, where General Rule 21 (see below) was applicable.

[75] *Duncan* v. *I. R.*, [1932] S. C. 151, see p. 301.

[76] *I. R.* v. *Lady Castlemaine*, 1943 2 All E. R. 471.

Payments not made wholly out of Taxable Profits : Deduction of Tax—Where any interest, annuity, or other annual payment charged under Schedule D[77] or any royalty[78] or other annual sum paid for the user of a patent, is not *payable*, or not *wholly payable* out of profits or gains brought into charge, that is, out of taxable profits, the payer is bound to deduct income tax against such payment and to account to the Crown for tax on that part which is not *actually paid* out of taxable profits.[79] A penalty is provided for failure to deliver an account; and the tax is assessed on the payer.[80] Any agreement to the contrary is void.[81] If the payer's assessment for any year is *nil*, any payment made by him in that year is not made out of profits or gains brought into charge, and he must account for the tax deducted,[82] even though accumulated profits, which had borne tax in previous years, were available for payment of the interest in question.[83]

Further, where the payments are not wholly made out of taxable profits, rule 21 applies to all interest, and is not confined to yearly interest.[84] A municipal corporation is bound therefore to deduct tax on interest for short loans contracted by it, if the interest is not paid out of taxable profits,[85] and executors are entitled to deduct tax in paying interest under a rule of Court upon a debt due from the testator, the interest being payable primarily out of capital, and having been in fact partly so paid.[86] When, under a mortgage, interest is added at intervals to the principal debt, that is not a payment of interest within rule 21; but when the amount thus owing is ultimately satisfied out of capital, that part which represents interest is within rule 21, and is chargeable accordingly.[87]

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[77] See p. 179 *sqq.*, r. 21 of the General Rules does not apply to voluntary payments, although its language is different from that of r. 19, cf. *Dalrymple* v. *Dalrymple*, p. 197.

[78] See p. 202.

[79] General Rules, r. 21 (1), (2), see p. 490, the substantive part of this rule corresponds with Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24 (3), but the words "to such tax" which created a difficulty in *London County Council* v. *Att.-Gen.*, [1901] A. C. 26 (see p. 3), are omitted. The object of s. 24 (3) was not to impose a double income tax. *L. C. C.* v. *Att.-Gen.* As to registered societies, see Act of 1933, s. 32 (1), see p. 154; and as to local authorities, see p. 199.

[80] That is, "the person by or through whom any such payment is made": r. 21 (2), (2A), (2B), see p. 491, and *Bradie's Case*, note [91]. A solicitor deducting mortgage interest due to himself in handing over purchase-money received on behalf of a client is such a person: *Howells* v. *I. R.*, [1939] 2 K. B. 597.

[81] R. 23 (2), considered p. 206.

[82] *Att.-Gen.* v. *Metropolitan Water Board*, [1928] 1 K. B. 833 (see p. 202). The same rule applies where the assessment is wholly set off by the carrying forward of losses under s. 33 of the Act of 1926 (see p. 153): *Trinidad Petroleum, etc. Co., Ltd.* v *I. R.*, [1937] 1 K. B. 408 (C. A.).

[83] *Luipaard's Vlei Estate, etc., Ltd.* v. *I. R.*, [1930] 1 K. B. 593.

[84] As is r. 19 (1), see p. 185.

[85] *L.-A.* v. *Edenburgh Corpn.* (1903), 6 F. 1, see p. 187.

[86] *Michelham* v *Michelham*, [1921] 1 Ch. 705; *Westminster Bank Ltd.* v. *Riches*, p. 183.

[87] *I. R.* v. *Oswald*, [1945] A. C. 360; 61 T. L. R. 370 (H. L.), overruling *I. R.* v. *Lawrence Graham & Co.*, [1937] 2 K. B. 179.

Apart from interest, the annuities and other annual payments referred to are the same in both provisions;[88] " small maintenance payments " under orders of Courts are excepted and the recipient is taxable for them.[89] If two companies have agreed to pool their profits, a payment by one company to the other is not within rule 21.[90] In the case of annuities also, rule 21 is applicable to any part which is paid out of capital. as where income is made up out of capital under the directions of a will.[91] Under this rule, the payer has a right to deduct as against the payee, whether or no the Crown make any claim for an account.[92] The rule applies to payments made by a company under an agreement by which it guarantees the fixed dividends of a subsidiary company for a term of years.[93]

The words " not payable, or not wholly payable " out of taxable profits, signify that the payments cannot lawfully be so paid; it is immaterial whether they are charged upon the taxable fund or not.[94] And in order to come within the scope of the rule, the payments must not be lawfully payable out of profits taxable under any Schedule; if they are payable out of profits received from land and charged under Schedule A, they will still be outside its scope.[95]

The effect of rule 21 when read with rule 19 is thus stated:— " annual payments paid in a particular year, which, if the profits or gains brought into charge for that year were large enough, would have been properly payable thereout, are to be treated as having been notionally paid out of the payer's assessed income for that year, and the payer is to be allowed to deduct and retain the tax on the annual payments provided that the amount so deducted and retained does not exceed the amount of tax payable by him in that year on his assessed income. Any such excess he may not retain, but he must account for it to the Crown."[96]

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[88] See p. 189, the annual payment need not be of the nature of interest: cf. *R.* v. *Special Commrs., Ex p. Shaftesbury Homes*, [1923] 1 K. B. 393, p. 285. It must, however, be " recurrent or capable of recurrence," *per* Lord MAUGHAM in *Moss' Empires, Ltd.* v. *I. R.*, [1937] A. C. 795

[89] Act of 1944, s. 25, p. 686.

[90] The paying company need not account for the tax, which is deducted under rule 20: *Ltd, Ltd* v. *I. R.*, [1944] 1 All E. R. 190, see p. 260

[91] *Brodie's Trustees* v. *I. R.* (1933), 17 Tax C. 432, *Williamson* v. *Ough*, see p. 190; *Pearse-Duncombe Trees.* v. *I. R.* (1940), 23 Tax C. 199, *Jackson's Trees.* v. *I. R.* (1942), 25 Tax C. 13 This is so, even though the trustees have a discretion in the matter. *Lindus* v. *I. R.* (1933), 17 Tax C. 442, *Cunard Trees.* v. *I. R.*, [1946] 1 All E. R. 159 (C. A.)

[92] *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, see p. 189.

[93] *Moss' Empires, Ltd.* v. *I. R.*, [1937] A. C. 785; *Aeolian Co., Ltd.* v. *I. R.* (1936), 20 Tax C. 547.

[94] *Sugden* v. *Leeds Corpn.*, [1914] A. C. 483; *Birmingham Corpn.* v. *I. R.*, [1930] A. C. 307 (see p. 202); see also *Michelham* v. *Michelham* above, and *Bayley* v. *Bayley* [1922] 2 K. B. 227, p. 189.

[95] *London County Council* v. *Att.-Gen.*, [1901] A. C. 26; see note [79].

[96] *Allchin* v. *Coulthard*, [1943] A. C., *per* Viscount SIMON, L.C., p. 622. As under rule 19 see p. 186, note [67], the payer is acquitted as against the payee.

A person who is entitled by the rule to deduct tax but fails to do so, is none the less assessable; his neglect does not discharge the debt.[97] The tax may, however, be deducted against payments made in arrear.[98] The amount deductible is to be calculated at the standard rate in force at the time of the payment.[99]

An assurance company which carries on the business of granting annuities is, however, prevented by a special provision[1] from treating as having been paid out of profits brought into charge any amount of annuities paid by which the taxed income of its "annuity fund"[2] is exceeded. Such a company is therefore bound to account to the Crown for the tax upon any such excess.[3]

Rule 21 is not limited to payments made in the United Kingdom, or in British currency.[3] Thus, payments made by a company resident in the United Kingdom to a French company in respect of an agency for the latter are payments to which rule 21 may apply,[4] as are payments of interest abroad by executors resident in the United Kingdom,[5] or by a British company.[6] If the primary obligation on such a company with regard to debenture interest to which the rule applies is to pay the interest in sterling, the company has to deduct, and account for, tax only on the sterling sum for which the warrant is made out, although it may be encashed in dollars or florins at rates which enable the holder to receive more than that sum.[6]

Payments out of Funds of Local Authorities and Investment Companies—The assets of local authorities and of some kinds of companies often comprise funds differing in their nature and impressed with different liabilities. In a long series of cases the question has been, not whether the paying authority or company had a right to deduct tax against the payee, but whether, having done so, it was entitled to retain the amount deducted for its own benefit, because the payment was made

[97] *L.-A.* v. *Edinburgh Corpn.* (1905), 7 F. 972.

[98] *Cf. Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, p. 186

[99] General Rules, r. 21 (1), see p 490. See *Re Lord Westbury's Settlement*, [1943] 2 All E. R. 463, where arrears were to be paid out of capital.

[1] General Rules, r. 21 (3), see p 491, this provision takes the place of s. 13 of the Finance Act, 1915 (5 & 6 Geo. 5, c 62), which was passed in order to supersede the decision of the House of Lords in *Edinburgh Life, etc.* v. *L.-A.*, see p. 201.

[2] Defined in s. 237, p. 452. The periodical return referred to in the definition as stating the liability of the company under its annuity contracts is that referred to under heading No. 7 in the Fourth Sched. (A) to the Assurance Companies Act, 1909 (9 Edw. 7, c 49); see also *n.* 5.

[3] *Rhokana Corpn., Ltd.* v. *I. R.*, [1937] 1 K. B. 788 (C. A.). In the H. L. (see below) liability was not disputed.

[4] *International Combustion, Ltd.* v. *I. R.* (1932), 16 Tax C. 532.

[5] *I. R.* v. *Viscount Broome's Executors* (1935), 19 Tax C. 667.

[6] *Rhokana Corpn., Ltd.* v. *I. R.*, [1938] A. C. 380 (H. L.).

out of taxable profits,[7] or whether it was bound to account for that amount to the Crown, because the amount was "not payable or not wholly payable" out of taxable profits.[8]

The right of the debtor to retain for his own benefit the amount of tax deducted against his creditors "depends upon whether he can answer in the affirmative each of the two following questions:—

"(1) Have the interest and the annuities been, in fact, paid, or must they, in the circumstances of the case, be taken to have been, in fact, paid out of 'profits or gains brought into charge,' *i.e.*, out of the so-called 'taxed fund'? (2) Was it lawful to pay them out of that fund?"[9]

As far as local authorities (which receive a very wide definition) are concerned, these questions are set at rest by the Act of 1945.[10] All profits of the authority for the year of assessment in question are to be treated as being available for the payment of any sums to which rule 19 or rule 21 applies, and which fall to be paid by that authority. And further, where it occupies any land as owner or as tenant under a long lease,[11] the net[11a] amount on which it bears Schedule A tax for any year is deemed to be available to it for that year's payment. Exception is, however, made as regards sums falling to be paid by the local authority which have been, or will be, reimbursed to it, which are equivalent to a deficiency that is to be made good, or which are charged to capital.

With these exceptions, therefore, a local authority is entitled (from the year 1944–45 onwards) to retain tax deducted by it under rule 21, as well as under rule 19.

The questions above stated may still have to be answered with regard to other bodies. Three of the cases above referred to arose in connection with the London County Council. In the first, the council were held liable to pay income tax in respect of interest received on loans advanced by them to other authorities.[12] The next case arose in respect of the dividends paid by the council upon their consolidated stock and the interest paid by them upon other moneys borrowed by themselves. The interest received by them from other authorities was credited to their Consolidated Loans Fund. They paid the interest payable by them partly out of this fund, partly out of rents and

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[7] See r. 19 (1), p. 185.

[8] R. 21 (1), (2); as to the meaning of the words quoted, see p. 196.

[9] *Sugden* v. *Leeds Corpn.*, [1914] A. C. 506, *per* Lord ATKINSON, see p. 201.

[10] Finance No. 2 Act, 1945, s. 21 (1)—(5); definition in sub-s. (4).

[11] See p. 52.

[11a] See p. 32.

[12] *L. C. C.* v. *Grove* (1896), 3 Tax C. 508, see p. 184.

profits on lands charged with income tax under Schedule A,[13] and partly out of rates. In paying the interest due, the council deducted tax; they accounted for the amounts deducted so far as the interest was paid out of rates (because these were not taxable profits), but declined to account for the amounts deducted against interest paid out of interest received, or paid out of the rents and profits referred to. They were held to be justified in their refusal.[14]

In the third of these cases, the London County Council sought to retain out of the amount deducted from that portion of the dividends which was paid out of the rates the income tax paid under Schedule A[15] upon the annual value of lands (including their own offices and so forth),[16] which they themselves occupied, and from which they derived no rents or pecuniary profits that could be devoted to the payment of dividends. These lands were, however, charged with the payment of the dividends (which far exceeded their annual value), and were mortgaged to their full value. The council contended that the annual value of the lands should be treated as annual income which they had applied to satisfy these charges. The council's claim was refused on the ground that although charged with the dividends, the lands in question did not, in fact, contribute anything to its payments, and the dividends could not be taken as constructively paid out of " a mere enjoyment "[17]

In the case of a life assurance company which granted annuities as a part of its business,[18] there was no particular fund earmarked for their payment; but they were paid in part out of interest, dividends and rents received by the company after income tax had been deducted against them, and in part out of premiums, considerations paid for annuities and profits on the realisation of investments. The interest, dividends and rents, on which tax had been deducted, were the only part of the company's income on which they were charged with tax; for if these had all been absent, the company's business would have resulted in a loss. This part of their resources provided a fund amply sufficient to pay the annuities in full, had the company elected to pay them out of that fund. The whole of the assets of the company, however, formed the fund upon which the annuities were charged. The company claimed to retain the tax upon the whole of the annuities; but the Crown contended

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[13] See p. 47.

[14] *L. C. C.* v. *Att.-Gen.*, [1901] A. C. 26, see p. 196.

[15] See p. 48, where the effect of the decision upon Sched. A is noted.

[16] See *Aberdeen Commissioners of Supply* v. *Russell* (1890), 17 R. 942, p. 184.

[17] *Att.-Gen.* v. *London County Council*, [1907] A. C. 131; as explained by Lord ATKINSON in *Sugden* v. *Leeds Corpn.*, [1914] A. C. 506; see p. 48.

[18] Cf. *Gresham Life, etc.* v. *Styles*, [1892] A. C. 309, p. 119.

that the company must apportion the annuities over the whole of the assets out of which they might have been paid, and must account for such amount as was proportionate to the untaxed part of those assets. It was held that the company's claim was well founded, that no such apportionment could be made, and that the annuities must be assumed to be paid out of the taxed fund.[19] Where the annuities are payable out of taxable profits, it is not necessary "to use, in paying the annuities, the actual moneys received in respect of the profits or gains in order to obtain the benefit of the deduction and retention."[20] Though the actual decision of the House of Lords has been superseded,[21] the principles laid down are not affected.

A city corporation, on the other hand, had to pay interest on various loans; some of these were raised for trading undertakings (such as waterworks, gasworks and tramways), which were lucrative, and yielded a profit exceeding the interest on these loans by £78,519; other loans were raised for sanitary undertakings (including electric lighting), which were not lucrative, and the interest on these loans exceeded the profit derived from these undertakings by a sum of £93,929; there was also a deficit when the aggregate profit in respect of all the undertakings was set against the aggregate interest payable. The deficit on the sanitary undertakings was met out of the borough fund, which included rates as well as the £78,519 yielded by the lucrative undertakings; the corporation were held, upon the construction of the local Acts, to have had no power to meet the deficit in this way.

The Crown claimed that the corporation were bound to account for the tax deducted on payment of £78,519:[22] and succeeded in their claim, because that sum was not legally payable out of the borough fund, although it had in fact been so paid.[23] On the other hand, where a taxed fund is lawfully available for the purpose, the council might retain tax on so much of the interest as could be met out of that fund,[24] even though they had not in their accounts shown the interest as having been so paid.[25]

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[19] *Edinburgh Life, etc.* v. *L.-A.*, [1910] A. C. 143. This decision was not followed in *Hancock* v. *General Reversionary, etc. Co.*, [1919] 1 K. B. 25 (see p. 124), where the question of the application of s. 24 (3) of the Act of 1888 did not arise directly; and it is submitted that the *General Reversionary Case* is, at any rate, no authority on General Rule 21, which takes the place of s. 24 (3). Cf. also *I. R.* v. *Crawshay*, p. 63.

[20] [1910] A. C., *per* Lord GORELL, at 545.

[21] R. 21 (3) of the General Rules; see p. 198, note [1].

[22] *I.e.*, of that part of the £93,929 paid out of the profits of the lucrative undertakings; the corporation admitted liability in respect of the part paid out of rates.

[23] *Sugden* v. *Leeds Corpn.*, [1914] A. C. 483.

[24] As in *Aitchison* v. *Coulthard*, [1943] A. C. 607, see p. 196.

[25] *I. R.* v. *Ayr Town Council*, 1938 S. C. 822, 22 Tax C. 396; cf. *Edinburgh Life Case*, above.

In another case,[26] a city corporation had deducted tax in paying interest on money borrowed for the purpose of their housing scheme;[27] under statutory regulations, the interest had to be paid out of the revenue of the scheme, any deficit being made up by a subsidy provided by the Exchequer; and the accounts of the housing scheme had to be kept separately from the other accounts of the corporation, but no special fund was kept for the scheme, and the corporation had only a single fund, the borough fund; apart from the revenue of that scheme, there were also paid into the borough fund taxable profits (including those derived from electricity and other undertakings) amply sufficient to pay the interest in question. They were, nevertheless, held to be liable to account for the tax deducted in respect of the amount of interest paid over and above that which was met out of the income derived from the scheme, in which income the subsidy was not included.

The Metropolitan Water Board carried on their undertaking at a loss in one year of assessment; consequently, in the following year, no assessment was made upon them under No. III of Schedule A.[28] They were held to be liable to account for tax deducted in payment of interest on stocks and debentures and of other annual payments in the second year out of the profits made in that year, for these were not "profits or gains brought into charge in that year."[29] Again, where a company had, in the exercise of a statutory discretion, charged to capital account the interest paid on debenture stock, they were liable for the tax deducted, although they might lawfully have paid the interest out of profits, and did pay it out of a general banking account which contained sufficient profits to cover the payment, and the assessed income of the year was also sufficient for that purpose.[30]

Patent Royalties : Mineral Rents, etc.— Where a royalty or other sum in respect of the user of a patent is paid wholly out of taxed profits, the payer is entitled to deduct and retain the

[26] *Birmingham Corpn.* v. *I. R.*, [1930] A. C. 307; *see* [1943] A. C. p. 623, *per* Viscount SIMON, L.C. See also *Boucher* v. *Hood*, [1945] 1 All E. R. 691. In *Dickson* v. *Hampstead Borough Council* (1927), 11 Tax C. 691, the facts were very similar, save that the subsidy was partly provided by the London County Council, and the decision was the same. In both cases the income of the scheme included the produce of a 1*d.* rate. See also *Belfast Corporation* v. *Turnbull* (1930), 15 Tax C. 474.

[27] See Housing, etc. Act, 1919 (9 & 10 Geo. 5, c. 35), ss. 1 (1), 7 (1), 8 (1); Local Authorities (Assisted Housing Schemes) Regulations, 1919, S. R. & O., 1919, No. 2047; London County Council Assisted Housing Schemes (Losses by Metropolitan Borough Councils) Regulations, S. R. & O., 1922, No. 874; and see s. 21 (3) of the 1945 (No. 2) Act, p. 780.

[28] Under r. 3 the assessment was based on the profits of the preceding year, as it is now under Case I of Sched. D: see p. 529.

[29] *Att.-Gen.* v. *Metropolitan Water Board*, [1928] 1 K. B. 833; affirmed (though some of the reasoning disapproved) in *Allchin* v. *Coulthard*, above.

[30] *Central London Ry.* v. *I. R.*, [1937] A. C. 77.

tax thereon; if it is not wholly so paid, he must deduct the tax, but must account to the Revenue.[31] If an interest in inventions and patents is sold for (in addition to certain fixed payments) a percentage payable annually for a term of years on the proceeds of sales of machines made in pursuance of the agreement, the payer is entitled to deduct income tax on the percentage payments.[32] But the distinction between income and capital payments applies here as elsewhere: and if a licence to use patent rights for a defined period is granted for a sum fixed in advance and payable by instalments, tax may not be deducted in paying the instalments;[33] and the payer cannot be assessed under rule 21.[34] The Crown is, on the other hand, entitled to deduct tax in making a payment for the mere user of a patent, though paid in a lump sum.[35] Unless the royalty or other sum is paid under a contract and wholly out of the profits or gains of a party to the contract, the recipient is liable to be directly assessed, provided that tax has not already been deducted against him under rule 21.[36] The provisions of section 211 (2) of the Income Tax Act, 1918, with regard to cases in which tax has not been deducted, or has been deducted at too low a rate, before the passing of the annual Finance Act, are extended to these royalties and payments.[37]

Rents and royalties payable in money for lands or easements used or intended to be used in connection with mines or other "concerns" (and not subject to recoupment) are treated for the above purposes in the same way as if they were patent royalties;[38] so also are rents payable under "long leases," and other annual sums charged upon land.[39]

Copyright Royalties—If a person (either as principal or as agent for the payer or payee) makes any payment of royalties or periodical sums in respect of a copyright to a recipient whose usual place of abode is not within the United Kingdom, that person is compelled to deduct income tax in making the payment

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[31] General Rules, rr. 19 (2), 21 (1), see pp. 490—491 For the effect on the computation of the payer's profits, see p. 120 See also Chap 7, pp. 171—175.

[32] *Jones* v. *I. R.*, [1920] 1 K. B. 711; the percentage payments were held to form part of the recipient's total income, see p. 305; the fixed payments admittedly did not, though payable in instalments: see *Foley* v. *Fletcher*, p. 194. Contrast *I. R.* v. *Ramsay*, p. 194; and cf. *I. R.* v. *Hogarth*, *ibid.*

[33] *Desoutter Bros., Ltd.* v. *J. E. Hanger, Ltd.*, [1936] 1 All E. R. 535; cf. pp. 194—195

[34] *I. R.* v. *British Salmson Aero Engines, Ltd.*, [1938] 2 K. B. 482; other payments there were within the rule. See *Beare* v. *Carter*, [1940] 2 K. B. 187.

[35] *Constantinesco* v. *The King* (1927), 43 T. L. R. 727, see also *Mills* v. *Jones* (1929), 46 T. L. R. 118, p. 106, and *Butterworth* v. *Handley Page* (1935), 19 Tax C. 328 The two former cases were distinguished in the *British Salmson Case*, above.

[36] *Wild* v. *Ionides* (1925), 9 Tax C. 392. See *International Combustion, Ltd.* v. *I. R.* p. 198.

[37] Act of 1930, s. 12 (2) (c), see p. 205, note [52]

[38] Act of 1934, s. 21; the matter is considered more fully, p. 136.

[39] Act of 1940, s. 17, see p. 52.

and to account for the tax.[40] The tax is to be deducted, and accounted for, upon the net amount of the royalties, after deducting any commission which the payer (if he is a resident agent) is entitled in paying them to deduct in respect of services rendered.[41] The rate in the £, according to which the tax is deducted and assessed on the payer, is to be that prevailing when the payment is made by the person by whom it is first made.[42] The recipient may be either the owner (in the ordinary sense) of the copyright, or a person who has assigned the copyright, but is still entitled to periodical payments in respect of it. The provision does not apply to royalties, etc., paid for any dramatic or artistic work for cinematograph production; nor to those shown to be paid in respect of copies of works exported for distribution outside the United Kingdom.[43]

The object of this provision is carried out by extending the scope of rule 21 of the General Rules, so that the person who makes the payment is assessed to tax upon it;[44] but it is immaterial whether the royalties, etc., in respect of copyrights are paid out of profits or gains brought into charge or not.

Failure to Deduct Tax or refusal to allow Deduction—If a person who is entitled to deduct tax against another in making any payment, refrains from doing so, he cannot afterwards seek to recover against the Crown the amount of income tax which he has thus failed to deduct.[45] Where he is bound to account to the Crown for the tax deducted, his failure to deduct tax does not excuse him from his liability.[46] But there has been some difference of practice where the payer has claimed to recover from the payee amounts of income tax which the payer had failed to deduct against him. The Courts in England, applying the well-established principle that payments voluntarily made under a mistake of law cannot be recovered, have, in general, rejected such claims.[47] In Scotland, on the other hand, a lessee of minerals who had been accustomed to pay royalties in full and afterwards to receive a repayment of income tax

[40] Act of 1927, s. 25, see p. 536; *Rye and Eyre* v. *I. R.*, [1935] A. C. 274. A lump-sum payment to cover a stated number of copies may be a payment within this section: *I. R.* v. *Longmans, Green & Co., Ltd.* (1932), 17 Tax C. 272.

[41] Act of 1930, s. 18 (1), see p. 556; see also proviso to sub-ss. 1 and 2.

[42] S. 18 (3); see also s. 12 (2) (b), which applies s. 211 (2) of the Act of 1918, considered p. 205.

[43] Act of 1927, s. 25 (2), see p. 536. The facts as to export must be proved to the satisfaction of the Special Commissioners, to whom appeals may be brought under r. 21 (2), (3), see p. 491.

[44] S. 25 (1); the effect of that rule is considered pp. 196 *sqq.*; and as regards assessment and appeal, see pp. 371, 378.

[45] *de Peyer* v. *The King* (1909), 100 L. T. 256; the provision for repayment of tax in a limited class of cases made in s. 36 (1) of the Act of 1918 has been considered p. 188.

[46] See p. 196.

[47] *Currie* v. *Gould* (1817), 2 Maddock, 163; *Ex p. Turner* (1864), 11 L. T. 352; *Ex p. Wythes* (1885), 53 L. T. 492, see p. 161; *Warren* v. *Warren* (1895), 43 W. R. 490, see p. 164; *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100; *In re Hatch*, [1919] 1 Ch. 351, see p. 164; *Ord* v. *Ord*, [1923] 2 K. B. 432. It is not easy to reconcile

from the lessor, was held entitled, when a new lessor supervened who refused repayment, to recover the amount of the tax, on the ground that the payment was made "according to the usual course of dealing, or under excusable error or misunderstanding";[48] in an earlier case, however, arising with regard to interest on a loan, where no such course of dealing was shown, recovery had been refused.[49] The tax may be deducted on payment of arrears.[50] If, however, payments due (*e.g.*, for alimony) have been made in part without deduction of tax, then upon payment of the arrears, the tax upon the amount of arrears only can be deducted.[51]

A special provision deals with cases in which the tax has not been deducted, or has been deducted at too low a rate, previously to the passing of the Act imposing the income tax for the year, and enables the payer to make up any deficiency caused either by the failure to make the deduction or by the fact that the tax is imposed for that year at a higher rate than was in force when the deduction was made. The language of this sub-section is wide; but it appears to be aimed only at the difficulty created by the fact that the Act imposing the tax is not now usually passed at the beginning of the year, and not to authorise any deduction of tax except in respect of the particular year for which the interest or other payment is due.[52] If, however, the payment is made in arrear, the payer may deduct tax on the whole sum paid; he is not confined to deducting the tax for the particular year in which the payment is made.[53]

In similar circumstances, the payee is also liable to a direct assessment for the amount of tax which has not been deducted against him.[54]

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with this series of cases the decision in *Crane* v. *Kilpin* (1868), L. R. 6 Eq. 334, that a debtor was entitled, in a final settlement with his creditors, to deduct income tax in respect of previous payments of interest made without deduction by trustees, to whom he had assigned a fund for the benefit of his creditors. Cf. cases cited in note 51.

[48] *Agnew* v. *Ferguson* (1903), 5 F. 879, *per* Lord MONCREIFF, at 885; the analogous provisions as to deduction against payments in the nature of rent are considered p. 46. But see *Fletcher* v. *Young*, below.

[49] *Galashiels Building Soc.* v. *Newlands* (1893), 20 R. 821, see also *Oswald* v. *Kirkcaldy Magistrates*, 1919 S. C. 147, *per* Lord STRATHCLYDE, L.P., at 152.

[50] *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100. As to the rate, see pp. 193, 198.

[51] *Fletcher* v. *Young*, 1936 S. L. T. 572; *Taylor* v. *Taylor*, [1938] 1 K. B. 320, *Wallis* v. *Wallis*, [1941] P. 69, 75.

[52] Act of 1918, s. 211 (2), see p. 447. This provision applies where the deduction is enjoined by General Rule 21 (see p. 196) as well as where it is authorised by General Rule 19: *Nesta, Ltd.* v. *Wyatt*, [1941] 1 K. B. 44, the *dicta* of SCRUTTON, L.J., to the contrary in *Hill* v. *Kirshenstein*, [1920] 3 K. B. 559 (see p. 44), were not followed. S. 211 (2) now extends, not only to rent, interest, annuities and other annual payments but to certain preference dividends (see p. 262), to certain copyright royalties (see p. 203), and to royalties, etc. paid in respect of patents (see p. 203): Finance Act, 1930, s. 12 (2). It is adapted for use in connection with the increase of rate under the No. 2 Act of 1940, by s. 6 (3) and Fifth Sched., see pp. 645, 648.

[53] *Kirk* v. *Cunnington*, [1921] 3 K. B. 637, see p. 44.

[54] S. 211 (1), see p. 447; and see under Sched. D, Case VI, p. 237.

There is a penalty of £50 for refusing to allow a deduction of tax authorised by the Income Tax Acts.[55]

Agreements against Deduction Void : Marriage Settlements, etc.—Every agreement for payment of interest, rent, or other annual payment (including annuities and royalties) without allowing the deductions of tax discussed in this chapter is void.[56]

This rule has been held to apply to marriage and other settlements,[57] to voluntary agreements of separation,[58] to settlements or deeds of covenant carrying out orders made in the Divorce Division[59]—though a direction in such an order for the payment of an annual sum free of income tax would be perfectly valid[60]—to an agreement settling the question of a disputed will,[61] to a trust deed containing a covenant for payment of debenture interest,[62] and to an agreement with shareholders to pay interest on prepaid calls.[63]

The recipient of an annuity or other annual payment under a covenant contained in any such document is therefore bound to allow a deduction of income tax, in spite of any stipulation to the contrary, unless the amount of the annuity or annual payment is directed thereby to be ascertained in one of two ways: first, where the agreement provides for a division between the parties of the income which may remain after income tax on the whole has been deducted, even though it is further provided that the proportion paid to one of the parties shall not be less than a fixed sum paid without deduction of tax:[64]

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[55] General Rules, r. 23 (1), see p. 491; *Att.-Gen* v *Shield* (1858), 28 L. J. Ex. 49. The Act of 1918 and the subsequent Income Tax Acts are to be construed as one: see Act of 1919, s. 28, p. 463, and, *e g.*, Act of 1942, s. 49 (4), p. 670. As to copyright royalties, see Act of 1927, s. 25 (5), p. 536

[56] General Rules, r. 23 (2), see p. 492, which takes the place of part of s. 103 of the Income Tax Act, 1842; see also p. 46. The rule does not apply to wills, see p. 191. In spite of the difference in wording between r. 21 (see p. 490) and r. 23 (2), it can hardly be doubted that patent royalties are within the latter rule, as well as mineral rents and royalties (Act of 1934, s. 21), rents under "long leases," and other annual sums referred to in s. 17 of the Act of 1940, see pp 203, 136, 52. See also note [55], and Act of 1927, s. 25 (5).

[57] In *Att.-Gen.* v. *Shield* (1858), 28 L. J. Ex. 49, *Floyer* v. *Banks* (1863), 32 L. J. Ch. 610; *Blair* v. *Allen* (1858), 21 M. 15: the settlements were marriage settlements; in *Re Cass's Settlement*, [1919] 2 Ch. 364, the settlement fulfilled a similar purpose In *Brooke* v. *Price*, [1917] A. C. 115, it was a settlement by consent on divorce. A mere settlement, where there is no bargain, is not within the rule, *In re Goodson's Settlement*, [1943] W. N. 26; 1 All E. R. 201.

[58] *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; see also *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, p. 205; *Booth* v. *Booth*, [1922] 1 K. B. 66, *Ord* v. *Ord*, [1923] 2 K. B. 432.

[59] *Blount* v *Blount*, [1916] 1 K. B. 230, see p. 169, *In re Peck's Settlement*, [1921] 2 Ch. 237, *Burroughes* v. *Abbott*, [1922] 1 Ch. 86.

[60] *Blount* v. *Blount*, above ; and see *Frankfort* v. *Frankfort*, p. 189, and *In re Shaw*, *ibid.* For the present practice of the Divorce Division in this matter, see *Wallis* v. *Wallis*, [1941] P. 64; and cf. *Spilsbury* v. *Spafforth* (1937), 21 Tax C. 247, p. 276; as to orders which intend tax to be deducted, see *Smith* v. *Smith*, [1923] P. 191, p. 199; *Thomson* v *Thomson* (S. C.) (1943), 22 A. T. C. 178.

[61] Cf. *In re Shaw*, [1918] P. 47, p. 189; *In re Gratton's Indenture*, [1923] 1 Ch. 77, p. 193.

[62] *South American Stores, Ltd.* v. *I. R.* (1926), 12 Tax C. 905.

[63] *Neal* v. *Trust, etc. Co. of Australasia, Ltd.*, [1937] 1 Ch. 428, see p. 263.

[64] *Brooke* v. *Price*, [1917] A. C. 115; *Smith* v. *Smith*, above.

and secondly, where the agreement provides "for the payment out of gross income of an annuity of such an amount as that after deduction of income tax thereon a fixed sum will be available to the annuitant."[65]

In *Brooke* v. *Price*, the direction in the settlement was to pay "an annual sum equal to one-fourth part of the annual net income (after income tax on the whole income has been paid) . . . or if one-fourth part . . . shall be less than the clear annual sum of £2,500, then the clear annual sum of £2,500 (without deducting income tax therefrom) out of such annual income," and this agreement was held to fall within the former class of exceptions. But it is not enough to save an agreement from being invalid, that the annual payment is directed to be made out of a fund which has already borne tax, if that payment is a fixed sum which does not vary with the annual yield of the fund in question; thus, a direction to pay the income from shares in a company "to the extent of, but not exceeding £2,000 per annum,"[66] and trusts to pay out of the income of the settled property "the annual sum of £1,400 free of all deductions whatsoever, including income tax,"[67] or "such a sum as shall after all deductions amount to £300 per annum,"[68] and to pay an "annuity of £5,000 and the tax and duties thereon . . . exclusively out of the income of" stock purchased or transferred for the purpose,[69] are all either void or ineffective so far as payment free of income tax is concerned.

Again, in *Booth* v. *Booth*,[65] the covenant was to pay "such weekly sum as will after deduction of income tax amount to £260 per annum"; this covenant was held to be valid as coming within the second class of exceptions above indicated; but a covenant to pay a fixed sum "free of income tax" cannot be brought within that class,[70] any more than a covenant to pay an "allowance . . . clear of all deductions."[71] Where stocks are the subject of the trust, a covenant by the settlor to pay to the trustees every year a sum equal to the tax deducted at the source in paying the interest or dividends is valid; but the settlor is entitled to deduct tax in paying that annual sum.[72]

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[65] *Brooke* v. *Price*, above; *Booth* v. *Booth*, [1922] 1 K. B. 66, see *In re Gretton's Indenture*, [1923] 1 Ch. 77, *per* ROMER, J., at 88; *Hutchison* v. *I. R.*, 1930 S. C. 293; 15 Tax C. 89, p. 306. Contrast *In re Portman* (*Viscount*), [1924] 2 Ch. 6, p. 189.

[66] *In re Cain's Settlement*, [1919] 2 Ch. 364; see *per* MORTON, J., in *In re Skinner*, p. 192.

[67] *Burroughes* v. *Abbott*, [1922] 1 Ch. 86, see p. 206. rectification was allowed in this case, but was refused in *Fredenson* v. *Rothschild*, [1941] 1 All E. R. 430.

[68] *In re Best*, [1942] 1 Ch. 77, see p. 193.

[69] *In re Gretton's Indenture*, [1923] 1 Ch. 77, see p. 206.

[70] *Blount* v. *Blount*, [1916] 1 K. B. 230, see p. 206; followed in *South American Stores, Ltd.* v. *I. R.* (*ibid.*), where the covenant was to pay the interest "free of English income tax."

[71] *Shrewsbury* v *Shrewsbury* (1906), 22 T. L. R. 598.

[72] *In re Gordon's Settlement*, [1924] 1 Ch. 146.

It should be borne in mind that the rule in question applies only to contracts between the payer and the payee; the rule has no bearing where the payer is no party to the agreement.[73]

The rule renders void only that portion of the agreement which purports to prevent a deduction of tax, and not the whole agreement.[74]

Where the annuity or annual payment is payable under a valid covenant, which gives the beneficiary a fixed clear yearly sum after deduction of tax, he is not bound to account for a proportion of any relief received.[75]

Tax-free Payments—For so long as the standard rate is over 5*s*. 6*d*. in the £, the payer of any interest, annuity or other annual payment considered in this chapter and payable free of income tax is relieved from the liability to pay more than the appropriate fraction of the sum that would otherwise have been payable.[76] If the payment is also free of surtax, the sum payable in order to fulfil that requirement is reduced to that fraction of the sum that would have been payable if the rates of surtax for the year 1937–38 had remained in force.[77] The denominator of that fraction is twenty-nine; and the numerator is twenty-nine less the number of sixpences in the standard rate over 5*s*. 6*d*.[78]

These enactments apply to periodical or other payments under any provision contained in any deed or other instrument,[79] in any will or codicil, in any order of any Court, in any local or personal Act, or in any oral or written contract; the provision must have been "made" before the 3rd September, 1939, and not have been varied on or after that date.[79] They apply where

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[73] *Brooke* v. *Price*, [1917] A. C. 115, *per* Lord WARRINGTON, at 126.

[74] The cases above cited were all decided upon that footing.

[75] *In re Jones*, [1933] Ch. 842; *I. R.* v. *Cook*, [1945] 2 All E. R. 383, 385, see p. 193, note [60].

[76] Act of 1941, s. 25 (1), (6) (as amended by No. 2 Act of 1945, s. 20), see p. 659; the scope of the section is confined as stated in the text by sub-s. 5 (c), (d). With regard to over-payments made before the Act, see Tax-Free Payments Regulations, p. 746, and see note [77]. As to valuation of an annuity affected, see *In re Rothermere*, [1945] K. B. 72.

[77] Sub-s. 2. The rates are those specified in Act of 1931, s. 6, increased by 10 per cent.: No. 2 Act of 1931, s. 7, see pp. 563, 564. Sub-s. 2 commences to apply as regards the surtax for 1940—41, *i.e.*, that which became payable on or before 1st January, 1942, and sub-s. 3 entitles a payee affected by s. 25 to have his surtax for that year adjusted. But s. 20 of the 1945 Act, see p. 779, is not to affect payments falling due before April 6, 1941.

[78] Including an assignment of income: *Pyke* v *Peters*, [1943] 2 K. B. 642.

[79] Sub-s. 1. A deed was not "varied" by a temporary arrangement: *Cobbold* v. *Davenport*, [1942] 2 All E. R. 291; nor a will by an arrangement to set aside money to answer annuities *Re Westrik*, *ibid.* 544; as to a deed of separation, see *Dudley* v. *Dudley*, [1944] 1 All E. R. 29. A mere alteration in amount is not a variation within s. 25 (1): *In re Sebag-Montefiore*, below; nor is a giving of priority or additional security. *In re Berkeley (Earl)* (No 2), [1945] 1 Ch. 169; 1 All E. R. 83; *Macquaten's Trustees* v. *Macquaten*, 1944 S. C. 397. But see *In re Dixon*, [1945] 2 All E. R. 206. The section has been held to apply to a provision varied after the date when the Act of 1941 was passed, *i.e.*, 22nd July, 1941: *Fitzgerald* v. *I. R.* (1944), 60 T. L. R. 407; this seems to involve reading words into the Act.

the provision is contained in a will executed before 3rd September, 1939, although the testator did not die until after that date.[80]

Where the obligation of the payer is to pay "such sum as will after deduction of income tax be equal to a stated amount" or is in words to that effect, it is the stated amount which is reduced to the appropriate fraction.[81] Where the obligation is to pay over a stated fraction of any specified income without deducting or allowing for income tax, that fraction is to be reduced to the appropriate fraction of itself; but where the obligation is to pay over a fraction of any specified income after deducting or allowing for income tax, the section does not apply.[82] Nor does it apply where the payment has ceased, or may cease, to be wholly free from income tax or surtax because of rises in the rates of tax.[83]

Special provision is made for cases in which the payee is liable to account for any relief from income tax which is attributable to the payment in question.[84] His liability is to be limited to the appropriate fraction of what it would have been if the standard rate had remained 5*s.* 6*d.* in the £, and the reliefs had remained as they were before the passing of the No. 2 Act of 1939;[85] and in such a case the reliefs "to be given" (apparently this means given by the Revenue authorities) are to be calculated as if the gross sum represented by the payment were what it would have been if the standard rate had remained 5*s.* 6*d.*; and as if that gross sum had borne income tax at the

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[80] *In re Waring*, [1942] Ch. 426 (C. A.), the material date is that of the execution of the will itself, although it is confirmed by a later codicil. *In re Sebag-Montefiore*, [1944] 1 Ch. 331. *Macqueen's case*, above.

[81] S. 27 (1) (a), see p. 661; *In re Powell*, [1945] K. B. 69. It is a very common practice to use some such formula in order to prevent an agreement from being invalidated by General Rule 23, see pp. 204—206, that rule is not affected by the new provisions, see s. 25 (5) (a). As to what sort of payment may be a "stated amount," see *In re Hawkins* (1942), 59 T. L. R. 105, an amount paid out of the capital of a trust to make up the deficiency in an annuity may be payable free of tax and is a "stated amount": *In re Bird*, [1944] 1 Ch. 111, and a specified sum is a "stated amount" though it has to be made up annually by adding to a variable net income: *Holmpatrick* v. *Ainsworth*, 1943 S. C. 75; *In re Berkeley*, *Macqueen's Case*, note [79]; *In re Lyons*, [1945] 2 All E. R. 434, where there was a discretion. A direction to pay to the widow £700 a year and "half the tax she is charged on" that sum "yearly" is not within s. 25. *Turner's Trustees* v. *Turner*, 1943 S. C. 389.

[82] S. 27 (1) (b).

[83] S. 25 (5) (b).

[84] S. 25 (4); see *In re Pettit* and the cases cited therewith, p. 193, notes [58], [59].

[85] And if the gross sum had been unaltered s. 25 (4) (a), read with s. 27 (1) (c). As to reliefs, see Chap. 1. Those in force at the time referred to were as follows (apart from the earned income deduction, which does not seem relevant here):—

Complete exemption where the total income did not exceed £125.

At 5*s.* 6*d.* in the £ on one-fifth of the income, if not exceeding £500, of an individual of 65, or a husband with a wife of 65.

At 5*s.* 6*d.* in the £ on £180 (increased by four-fifths of the wife's earned income up to a limit of £45) for a married man living with or wholly maintaining his wife; on £100 for a single man or woman (as to conditions, see p. 10).

At 3*s.* 10*d.* in the £ on the next £135 of the income.

At 5*s.* 6*d.* in the £ on £60 in respect of each child living with the recipient; and at the same rate in respect of other dependants on the amounts specified at pp. 14, 15.

standard rate for the year of assessment in which the payment falls to be made.[86]

Discounts—The tax charged under Case III of Schedule D extends to "all discounts,"[87] that is to say, to all discounts which are either "profits" or "income";[88] in other words, the tax extends to all "profits arising from discounts received on discounting transactions," or to all "profits on securities bought at a discount, and on transactions involving a discount."

"The rule . . . relates to profits on all discounts from whomsoever made. . . . The rule applies equally whether the lender solicits the privilege of furnishing money to the Treasury at prices which it fixes . . . or whether the borrower approaches the lender . . . and offers his acceptance . . . in order to obtain temporary accommodation. It includes both the transaction between the original parties and the transaction as modified by the introduction of the *bona fide* holder for value. . . . Furthermore, there is nothing to show that under this [rule] profits on discounts have to be analysed into a return for the use of money by way of income, and a possible accretion to capital."[89]

Treasury Bills are "issued at a discount," and any profit realised in the course of business by reason of this fact is taxable under Case III. Even if the discounted bill has been sold before maturity, or has been converted into War Loan, the whole of the increase in price realised is included in the taxable profit,[90] and the same principles apply to a bill purchased in the market and not from the Government.

Profits from discounts are brought into account for tax purposes in the year in which they are in fact received; though the interest may have been accruing during two or more financial years, it is not to be apportioned to each of those years.[90] If there are transactions in discounts, and possibly if any Treasury Bills are held, in any year of assessment, although no profits are made in that year, there may be an assessment on the profits of the preceding year; but if there are no such transactions, and if no Treasury Bills are held in the year, no assessment appears to be possible, although profits were made in the preceding year.[91]

Under Case III each transaction involving a discount is treated as a separate source of taxable income; and there is

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[86] S. 25 (4) (b), as amended by s. 20 of the 1945 No. 2 Act, read with s. 27 (1) (c).

[87] Case III, r. 1 (b), see p. 479.

[88] For the rules in Case III are subject to the words prescribing the scope of Case III which appear in Sched. D 2, see p. 179. The effect, therefore, of the present form of enactment does not differ materially from that of r. 2 of the third case of Sched. D in the Act of 1842, which speaks of "the profits . . . on all discounts," and on which *Brown* v. *National Provident Institution*, [1920] 3 K. B. 35; [1921] 2 A. C. 222 (see p. 182), was decided.

[89] *Per* Lord SUMNER, [1921] 2 A. C. 254, 255. See *Lomax* v. *Peter Dixon, Ltd.*, pp. 218, 225.

[90] *Brown* v. *National Provident Institution*, above.

[91] The statement in the text is intended to give the effect of the decision last cited together with s. 22 of the Act of 1926, see p. 4.

no set-off for losses incurred; but where a person carries on a trade of discounting, the assessment may be made under Case I, and, if so, he will be entitled to debit himself with losses.[92]

Profits of Securities bearing Interest payable out of the Public Revenue—Such profits of this kind as are not charged under Schedule C are to be charged under Case III;[93] Schedule C charges the interest itself together with dividends and annuities.[94] The profits left to be charged under Case III of Schedule D appear therefore to be profits of a similar kind to those considered under "discounts," for a gain due to a change of investments is not taxable income,[95] except where the buying and selling of investments is carried on as a trade, the profits of which are taxable under Case I.[96]

Small payments of Interest out of Public Revenues—Interest, annuities, dividends and shares of annuities payable out of public revenues are in general taxed at the source under Schedule C,[97] but where the half-yearly payment in respect of any of these is 50*s*. or less, the assessment is made under Case III of Schedule D[98] directly upon the recipient, unless he is exempt from income tax.[99]

Interest on War Loan, etc.—The interest on securities issued under the War Loan Acts, so far as it is paid without deduction of tax, and the interest on securities issued under the National Loans Act, 1939, if so paid, are taxable under Case III of Schedule D.[1] The tax, in general, is levied on the interest received in the previous financial year, and not upon that received during the year of assessment.[2] If a holding of Exchequer Bonds had ceased before the year of assessment begins, the continued holding of War Loan Stock did not entail liability to tax on the previous year's income from Exchequer Bonds;[3] the stock and the bonds were separate sources of income for the purpose of the provisions with regard to cesser of possession and acquisition of a new source.[4] But there is no such distinction between the ordinary War Loan and the Post Office issue,[5] or between War Loan Stock and National War

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[92] See *per* Lord STERNDALE, M.R., [1920] 3 K. B. 51.
[93] Sched. D, Case III, r. 1 (c), see p. 479.
[94] See Chap. 4.
[95] See *per* Lord SUMNER in *Brown* v. *National Provident Institution*, [1921] 2 A. C. 256.
[96] See pp. 109, 110.
[97] See pp. 62—64.
[98] Sched. C, first set of rules, r. 9, see p. 470; second set, r. 3, see p. 471; third set, r. 2, see p. 472; Sched. D, Case III, r. 1 (d), see p. 479.
[99] See p. 8.
[1] S. 49, see p. 417; and Sched. D, Case III, r. 1 (f), see p. 479. As to British municipal loans raised in the U. S. A., see s. 46 (4). The option given by s. 27 of the Finance Act, 1921, to have the tax deducted at the source is considered p. 63. See 2 & 3 Geo. 6, c. 117, s. 3, and 2nd Sched., para. 4.
[2] Case III, r. 2, see p. 181.
[3] *Grainger* v. *Maxwell's Executors*, [1926] 1 K. B. 430; see *Brown* v. *National Provident Institution*, p. 210
[4] Act of 1926, s. 30, see p. 531.
[5] *Turton* v. *Mitchell* (1927), 138 L. T. 365.

Bonds.[6] The rule for the joint assessment of a husband and a wife living together does not prevent a widow from being taxed, for the year of assessment in which her husband dies, upon her interest on War Loan Stock so paid in the preceding year, though her husband was then alive and living with her.[7]

If War Loan Stock is sold with interest rights, the interest accrued forms part of the purchaser's income, and cannot be apportioned to the vendor.[8] Where War Stock or Bonds are accepted by the Inland Revenue in satisfaction of death duties, executors are not chargeable in respect of interest accrued to the date of the transfer;[9] but are liable to tax on interest accrued due during the half-year in which the testator died.[10]

Savings Bank Deposits—Savings banks are exempt from tax under Schedule D in respect of any income applied to the payment or credit of interest to the depositor;[11] but the depositor is charged under Case III with the tax on such interest, unless the savings bank has deducted tax in paying or crediting him with the interest.[12]

Foreign and Colonial Assurance Companies—Many assurance companies[13] carry on business in the United Kingdom although, the "head and seat and directing power"[14] being situate abroad, they are not "residing" in the United Kingdom[15] within the meaning of the Income Tax Acts. In relation to such companies, the Crown might have difficulty in exercising its option to levy the tax upon interest on investments rather than upon actual profits of trading,[16] were it not enabled to do so by a set of provisions contained in the rules of Case III.[17] Under these provisions, an assurance company not having its head office in the United Kingdom is liable to be assessed on a certain portion of the income from the investments of its life assurance fund (that is, the fund representing the amount of its liability with respect to its life assurance business, excluding annuity business) for the year preceding the year of assessment.

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[6] *Merrifield* v. *Wallpaper Manufacturers, Ltd.*, [1931] 2 K. B. 143.

[7] *Leitch* v. *Emmott*, [1929] 2 K. B. 236 (see p. 274), where the reasoning in *Walker* v. *Howard* (1927), 138 L. T. 367, was not approved by the C. A. The actual point decided in that case is now met by Act of 1926, s. 30, proviso (ii), see p. 182.

[8] *Wigmore* v. *T. Sumerson, Ltd.*, [1926] 1 K. B. 131.

[9] *Monks* v. *Fox's Executors*, [1928] 1 K. B. 351; but see *Mitchell* v. *I. R.* (1933), 18 Tax C. 108, Finance Acts, 1917 (7 & 8 Geo. 5, c. 31), s. 34, 1918 (8 & 9 Geo. 5, c. 15), s. 42.

[10] *Reid's Trustees* v. *I. R.* (1929), 8 L. T. 372.

[11] S. 39 (3) (b), see p. 416; see proviso (ii) as to cases where the interest paid to any depositor in the year exceeds £5.

[12] Sched. D, Case III, r. 1 (e), see p. 479.

[13] Defined in s. 237, see p. 452.

[14] See p. 82.

[15] See p. 79.

[16] See p. 121.

[17] Sched. D, Case III, r. 3, see p. 448; the existence of these rules does not prevent the Crown, at its option, from taxing the profits under Case I: *Equitable Life, etc. of U. S. A.* v. *Hills* (1924), 8 Tax C. 657. In computing the income, exemption under Sched. C is disregarded: Act of 1940, s. 21 (3) (a), p. 609; see p. 62.

This portion of income is in general calculated at the same proportion of the income as the amount of premiums received from policy holders resident in this country or from any other policy holders who have made their proposals through the company's office or agency in this country bears to the total premiums received;[18] a similar proportion of expenses of management is deducted.[19] But where the head office of the company is in a British possession, the Commissioners of Inland Revenue may by regulation prescribe some other basis of apportionment.[20]

This charge is, however, alternative only and not additional, and will be cancelled or reduced proportionally if the income of the life assurance business has already borne tax by deduction, or "otherwise," that is, if a charge has already been made under Case I on the trading profits of that business;[21] "life assurance business" includes the business of granting annuities.[22] The making of such charges is in the hands of the Special Commissioners.[23]

Expenses of Management of Life Assurance and other Companies—As has been seen,[24] companies carrying on certain classes of business are liable to be taxed (at the option of the Crown) upon the interest and dividends derived from their investments, instead of being taxed upon the profits of their trade under Case I of Schedule D. Where there is no assessment of the kind last mentioned, provision is made for relief in respect of any sums disbursed as expenses of management (including commissions);[25] a special reduction in rates of premium made in favour of the members of a particular body is not a disbursement of "expenses."[26] But for this provision, the companies to which it refers would be at a disadvantage as compared with other companies of the same class, who are assessed upon their profits, because expenses of management are deducted before the profits of trade can be ascertained.[27] Relief is not to be given so as to make the tax paid less than would have been paid if the profits had been charged under Case I of Schedule D;[28] but this proviso does not apply to a company which does not carry on a trade and could not therefore have been charged under that Case.[29] It is submitted that the word "paid" here means "ultimately paid out of the funds

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[18] See note [17], previous page.
[19] S. 33 (4), see p. 413; see also succeeding paragraphs.
[20] Case III, r. 3 (2), proviso.
[21] R. 3 (4).
[22] See definition in s. 237, p. 453.
[23] R. 3 (3), see p. 480.
[24] See p. 94.
[25] S. 33, see p. 412. As to lessors of minerals, see Act of 1922, s. 26, p. 137.
[26] *North British and Mercantile, etc.* v. *Esson* (1919), 7 Tax C. 463.
[27] See pp. 99 *sqq.*
[28] S. 33 (1), proviso (a). Any relief, however, disallowed by reason of this proviso may be carried forward year by year for six years. Act of 1933, s. 33, see p. 571.
[29] *Simpson* v. *Grange Trust, Ltd.*, [1935] A. C. 422.

of the company," and that any tax which was paid or which would have been paid by the company in the first instance, and recouped by deduction against the recipients of interest, etc., must be left out of the account.[30]

The relief is confined to assurance companies[31] carrying on life assurance business; to companies[32] and registered societies[33] whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom;[32] to " any savings bank or other bank for savings."[34]

The expenses of management on which repayment can be claimed are reduced in the case of an assurance company by the amount of any fines, fees, or profits arising from reversions (against such profits may be set off any loss arising from reversions in any previous year from April 6, 1915, onwards);[35] by the amount of the expenses attributable to management of any income of the foreign life assurance fund relieved from tax;[36] and by the amount of any profits arising from the granting of annuities on human life.[37] Where the assurance company has not its head office in the United Kingdom, the relief given corresponds with expenses of management of that portion only of the income of its life assurance fund on which it pays tax.[38] These provisions are to be applied separately to the ordinary, and the industrial, life assurance business carried on by the same company.[39] A loss on exchange due to the payment of coupons abroad does not form part of expenses of management;[40] nor do the expenses of a debenture issue.[41]

In the case of any other company than an assurance company, or of any such bank, the expenses of management are reduced by the amount of any income or profits derived from sources not charged to tax.[42]

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[30] *Rooyth Building and Estates Co., Ltd.* v. *Rogers*, 1921 S. C. 372, is overruled by *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432, see p. 123; see also *Simpson* v. *Grange Trust*, above.

[31] Including mutual assurance companies: Act of 1923, s. 16 (4), see p. 518.

[32] See pp. 72, 76; and see note [39].

[33] Added by Act of 1933, s. 31 (4), see p. 568, and see p. 72.

[34] Other exemptions for certain kinds of savings banks are created by Act of 1918, s. 39 (3) (a), (b), see p. 289.

[35] S. 23 (1), provisos (b), (c); the first enactment granting this relief is s. 14 (1) of the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), which applies to the tax for the year beginning on that date.

[36] S. 23 (5), this appears to refer to the relief in respect of certain war loan securities given by s. 46 (2), (3), see p. 64; but see Act of 1940, s. 21 (3) (b), p. 641.

[37] Finance Act, 1923, s. 16 (2), see p. 485, which provides how such profits are to be computed; see also Act of 1940, s. 21 (1) (b), p. 640.

[38] Act of 1918, s. 23 (4); a provision for assessment on a portion only of its income is contained in Case III of Sched. D, see p. 212, note [17]; as regards that portion, the relief is subject to the same limitations as that given to a company which has its head office in this country: *Equitable Life, etc. of U. S. A.* v. *Hills* (1924), 8 Tax C. 667.

[39] Act of 1923, s. 16 (3), see pp. 486, 518.

[40] *Bennett* v. *Underground Electric, Ltd.*, [1923] 2 K. B. 535.

[41] *London County Freehold, etc. Co., Ltd.* v. *Sweet*, [1942] 2 All E. R. 212.

[42] Act of 1918, s. 23 (1), proviso (b); instances of income or profits not charged will be found in s. 39 (3) (a), (b), see p. 212.

Note that in all these cases it is the whole amount of the profits from reversions or the profits not charged to tax that has to be deducted; and not merely the proportion of the expenses which is attributable to the management of the source from which those profits are derived.

Any expenses (connected with repairs, maintenance, insurance, or management of land) for which relief can be claimed[43] under Schedule A, No. V, rules 7, 8 must also be excluded.[44] Certain war risk payments and contributions are not to be included.[45]

The claim must be made to the Special Commissioners. It must be made by notice in writing to the surveyor (which must state particulars) within twelve months after the expiration of the year of assessment to which it relates.[46] The facts, including the fact that tax has been paid by deduction[47] or otherwise, and not assessed under Case I of Schedule D, must be proved to the satisfaction of the Special Commissioners;[48] if the surveyor objects to the claim, it is heard as if it were an appeal, and a case may be stated for the High Court.[49]

Miscellaneous Profits from Lands—The miscellaneous profits transferred to Case III from No. II of Schedule A have been enumerated above.[50] They will be assessed in general on the profits of the preceding year, subject to different rules as to the first and the second year in which the profits arise;[51] but in computing those profits the "like deductions and allowances shall be made" as under No. II of Schedule A.[52] As regards tithes and teinds, dues, etc., in right of the Church or by endowment or in lieu of tithes, tithes compounded for, and rents and other money payments in lieu of them, a deduction for necessary costs of collection must be allowed.[53] Deductions are also allowed in respect of local rates,[54] of tenths, first fruits, etc., procurations and synodals,[55] and of the repairs of any collegiate church or chapel, or of the chancel of any church, where the recipient is bound to repair.[56] Certain deductions are allowed

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[43] See pp. 32—35.
[44] S. 33 (3); *London and Northern Estates, Ltd* v. *Harris*, [1939] 1 K. B. 335; *Southern* v. *Aldwych Property Trust, Ltd.*, [1940] 2 K. B. 266, see p. 34.
[45] The enactments against such inclusion indicated under "War Risk Payments, etc." (see p. 116), all expressly refer to s. 33 of the Act of 1916.
[46] S. 33 (2).
[47] See pp. 185 *sqq.*
[48] S. 33 (1).
[49] S. 33 (2); as to appeal and case stated, see Chap. 18.
[50] See p. 179.
[51] Case III, r. 2 (1); see "Basis of Assessment," p. 181; but s. 30 of the Act of 1927 does not appear to apply, these profits not being chargeable under r. 1 of Case III.
[52] Act of 1926, s. 28, and Third Sched., see pp. 529, 535.
[53] *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442; see especially *per* A. L. Smith, J., at 444; 20 Q. B. D. 442. The Tithe Act, 1936 (see p. 589), leaves certain compounded tithes in existence. No allowance for tenant's profits is admissible under No. II or under Sched. D.
[54] Sched. A, No. V, r. 1 (d); No. VII, r. 7, see pp. 458, 463.
[55] No. V, r. 1 (a), (b).
[56] No. V, r. 1 (c).

generally from the profits of clergymen and ministers of any religious denomination.[57]

In the case of manors and other royalties,[58] a deduction for the costs incurred in collection has been refused, on the ground that such costs were not admitted to be necessary.[59] It is submitted that this decision lays down no generally applicable rule, for it is inherent in the nature of profits that the cost of obtaining them should be excluded.[60]

The profits of fines charged by rule 6 of No. II are subject to a deduction for any part of the money applied as capital productive of taxable income.[61] which appears to be discretionary on the part of the Commissioners, and not to be claimable as of right; the deduction cannot be made where the money is merely placed on temporary deposit in a bank.[62]

Deduction of Tax—The tax in respect of these miscellaneous profits is charged on the persons or bodies receiving or entitled to the income.[63] As regards tithes arising from lands, teind duty, or any other of these profits which is an annual payment reserved or charged upon any lands, the rules of Schedule A, no longer regulate the deduction of tax by a landlord, owner or proprietor in making the payments.[64] However, it appears that, since the transfer to Schedule D, rules 19 and 21 of the General Rules are applicable not only to the above payments which are charged with tax by rules 1, 2 and 3 of No. II, but also to the other profits arising from lands which are charged by rule 7; so that the payer is entitled to deduct tax in making the payment, under rule 19 if he makes it wholly out of profits or gains brought into charge, and under rule 21 if he does not; and that, in the former case, no assessment can be made on the payee.[65] The deduction is made at the standard rate in force for the year in which the payments are due.[66] The scope of rule 7 is much restricted;[67] but it includes a dead-rent paid in respect of minerals not yet won, if not subject to recoupment.[67]

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[57] General Rules, r. 2, see p. 487.

[58] That is, royalties of a manorial nature, not ordinary mineral royalties or royalties on patents or copyrights: see note [9], p. 180.

[59] *Duke of Norfolk* v. *Lamarque* (1890), 24 Q. B. D. 485; *Stevens* v. *Bishop*, above, was distinguished on that ground.

[60] *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. 433, see p. 98; *Stevens* v. *Bishop*, above.

[61] Sched. A, No. II, r. 6, proviso, see p. 455, preserved by Act of 1926, s. 28 and Third Sched.

[62] *Lord Mostyn* v. *London*, [1895] 1 Q. B. 170.

[63] Sched. D, Misc. Rules, r. 1, see p. 482. The specific directions on this matter in rr. 4, 5, 6 and 7 of No. II of Sched. A are not preserved by s. 28 or the Third Sched. to the Act of 1926, and are no longer applicable.

[64] Act of 1940, s. 17 (2) (see p. 52), removes them from Sched. A, No. VIII, r. 4, see p. 464. See rr. 1, 2, 3 of No. II, p. 179. As to occupiers, *e.g.* 3 of No. VIII appears still to be in force.

[65] Manorial dues and fines so far as these still accrue (see p. 180, note [10]), are not "annual payments." Rr. 19 and 21 and their consequences are dealt with at length, see pp. 185 *sqq.*, 195—196.

[66] Act of 1927, s. 20 (1), see p. 542.

[67] See p. 180, notes [11], [12]; and s. 21 of the Act of 1934, considered at p. 136.

Such a dead-rent was indeed held[68] not to be an annuity or other annual payment within section 102 of the Act of 1842, which is replaced by General Rule 19; but it is submitted that that decision is inapplicable after the transfer of these profits to Schedule D.

[68] *Hill* v. *Gregory*, [1912] 2 K. B. 70, see p. 180; it seems doubtful whether the decision on this point can stand with that of the C. A. in *R.* v. *Special Commissioners, Ex p. Shaftesbury Homes*, [1923] 1 K. B. 393.

CHAPTER 9.

INCOME FROM FOREIGN SECURITIES AND OTHER FOREIGN POSSESSIONS: SCHEDULE D, CASES IV AND V

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Scope of Cases IV and V—Like the other cases of Schedule D, Cases IV and V are subject to the opening rule of Schedule D. By this rule the tax is charged upon the annual profits accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and from any trade or profession whether carried on in the United Kingdom or elsewhere.[1] It is also charged upon all interest of money, annuities and other annual payments not charged under Schedules A, B, C or E,[2] without specifying the country from which such interest, etc., originates, or in which it is paid.

Since the alterations in Case V made by section 19 of the Act of 1940, the income from property out of the United Kingdom and dealt with in Cases IV and V is grouped as follows: first, that arising from securities;[3] secondly, that " immediately derived " by a person from the carrying on by him of any trade, profession or vocation solely or in partnership, together with that arising from any office, employment or pension;[4] thirdly, that arising from other possessions,[5] which include stocks and shares and interests in land not being " securities," as well as a trade, etc., carried on by a trust.

As regards income of the first and third groups, the question whether the whole of the income is charged with the tax, or only that portion which is brought to the United Kingdom, depends on whether the recipient is a British subject, or is domiciled,[6] or is " residing,"[7] or is " ordinarily resident,"[8] in this country.

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[1] Sched. D, 1 (a) (i). (ii), see p. 472.

[2] Sched. D, 1 (b).

[3] Except interest, etc. payable out of public revenues, and charged under Sched. C; Sched. D, 2, Case IV, see p. 472; Case IV, rr. 1, 2, see p. 480.

[4] Sched. D, 2, Case V; Case V, r. 2.

[5] Sched. D, 2, Case V, see p. 472; Case V, rr. 1, 3, see p. 481. The discount on interest-bearing notes issued at a discount in return for a loan is a capital accretion, and not income: *Lomax* v. *Peter Dixon, Ltd.*, [1943] 1 K. B. 671 (C. A.); see p. 225.

[6] See p. 221.

[7] For the meaning of this word as regards companies, see *Swedish Central Ry., Ltd.* v. *Thompson*, [1925] A. C. 49; *Egyptian Delta Land, etc. Co.* v. *Todd*, [1929] A. C. 1, see pp. 82—86, 225, 227; as regards individuals, see Chapter 12.

The following classes of persons are liable in respect of the whole of any income in these two groups, whether it is brought to this country or not:—[8]

individuals who are British subjects and are both domiciled and ordinarily resident in the United Kingdom;

individuals who are subjects of foreign States but are domiciled in the United Kingdom, wherever they ordinarily reside, provided that they have a residence in this country;[9]

companies[10] and other bodies residing[11] in this country except assurance companies in respect of income arising from the investments of their foreign life assurance funds.[12]

The following classes are liable in respect only of that portion of the income brought to this country:—[13]

individuals who are British subjects but are not domiciled in the United Kingdom, although they have a residence here;

individuals who are British subjects domiciled in the United Kingdom, but are not ordinarily resident here;

individuals who are subjects of foreign States, and are not domiciled in the United Kingdom, although they have a residence here;[14]

assurance companies in respect of income arising from the investments of their foreign life assurance funds.[12]

Persons who are not in any sense "residing" in the United Kingdom are not liable in respect of any of the income described in Cases IV and V, whether it is brought to this country or not,[15] and an individual who was the subject of a foreign State

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[8] Case IV, r. 1. Case V, r. 1, see pp. 480—481; r. 2 of Case IV and r. 3 of Case V show the classes of persons to whom r 1 of either case does *not* apply. Under the Act of 1842, Sched. D, fourth and fifth cases, the income from foreign securities and possessions was taxable only so far as it was received in the United Kingdom; the rules of these cases, which now provide for payment by certain classes of persons on the whole income were introduced by s. 5 of the Finance Act, 1914 (4 & 5 Geo. 5, c. 10); as to possessions other than securities, stocks, shares, or rents, the decision in *Colquhoun* v. *Brooks* (see p. 80) was, however, left undisturbed.

[9] Sched. D, 1 (a), referred to at the head of this chapter.

[10] It is believed that companies which are not incorporated in the United Kingdom, though they carry on business in this country, are treated under those cases in the same way as individuals who, though resident, are not domiciled; see below.

[11] See note [7], previous page.

[12] "Assurance company," and "foreign life assurance fund," are defined in s. 237, see p. 420. As to war loan securities, forming part of the investments of such a fund see s. 46 (2), (3), p. 64.

[13] Case IV, r. 2; Case V, r. 3. These rules are applied also to companies registered abroad; see note [10].

[14] Cf. *I. R.* v. *Cadwalader* (1904), 7 F. 146, 5 Tax C. 101; *Loewenstein* v. *de Salis* (1926), 10 Tax C. 424, and other cases cited pp. 221, 267.

[15] Such persons are not within the scope of Sched. D, 1 (a) (i), (ii), see p 440. Thus, a company not residing in this country is not taxable in respect of interest on mortgages or rents of land in Egypt: *Egyptian Delta, etc. Co.* v. *Todd*, above. But a wife is liable who is residing separately in this country: *Derry* v. *I. R.*, 1927 S. C. 714, see p. 274.

and was neither domiciled nor resident in this country was held not to be liable in respect of income not brought to this country, although the income was derived from trust funds and the trustees were domiciled and resident in the United Kingdom; neither were the trustees chargeable.[16]

In respect of income of the second group (which includes as has been seen trades, professions, employments and pensions) a person residing in this country is charged only to the extent to which it is received in this country.[17] If a beneficiary, residing in this country, is entitled to the income derived from a trust fund outside the United Kingdom, he is taxable in respect of the whole income from such part of the fund as consists of securities or "other possessions," and as to any part of such income which arises (if such a state of affairs is conceivable) from any office, employment or pension, only so far as it is received in this country;[18] if the trustee of such a fund (being a British subject) is resident in this country as well as the beneficiary, and has control of the income, the same rules appear still to apply;[19] they apply to a life tenant, although there is also an annuitant on the fund, and although the trustees are entitled to a percentage for their services.[20] And since the change made by the Act of 1940, if the beneficiary has only a right to have the trust duly administered and is resident in the United Kingdom, he appears to be liable under rule 1 of Case V in respect of the whole income.[21] Any income derived from a trade, etc., through a trust is within the third group. Where liability is confined to sums received in this country, it includes sums so received by others on the instructions of the person chargeable.[22]

Some relief is given where income tax has already been paid or borne in any British Dominion.[23]

A person who is in the United Kingdom "for some temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided in this country for six months in any year of assessment, is not to be charged in respect of securities or other possessions out of the United Kingdom; but if he resides for six months or more in the year,

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[16] *Williams* v. *Singer*; *Pool* v. *Royal Exchange, etc.*, [1921] 1 A. C. 65.

[17] Case V, r. 2, see p. 481; as to what constitutes receipt in this country, see p. 220. See also p. 228.

[18] *Baker* v. *Archer-Shee*, [1927] A. C. 844; for subsequent proceedings as to the years in question in this case, see 15 Tax C. 1.

[19] *Kelly* v. *Rogers*, [1935] 2 K. B. 446, but see *Williams* v. *Singer*, [1921] 1 A. C. 65, p. 233.

[20] *Nelson* v. *Adamson*, [1941] 2 K. B. 12.

[21] This seems to follow not only from the new wording of r. 1 (c) (see p. 449), but from *Archer-Shee* v. *Garland*, [1931] A. C. 212, as applied thereto.

[22] *Thompson's Executors* v. *Yarbury*, [1936] 1 K. B. 645; 154 L. T. 283; but it is otherwise if the gift to the other person is completed abroad: *Carter* v. *Sharon* (1936), 20 Tax C. 229.

[23] Finance Act, 1920, s. 27, see p. 499; see also Chap. 1, p. 19; and see Supplement.

he is chargeable in that year to the extent allowed by Cases IV and V, whether his purpose is permanent or temporary.[24]

The option of the Crown to tax under these cases assurance or investment companies who hold foreign securities or possessions in the course of their business, instead of including the income therefrom in the profits of their trade, has been considered in connection with Case I.[25]

The Act of 1936 contains provisions for "preventing the avoiding by individuals ordinarily resident in the United Kingdom by means of transfers of assets" abroad; and others dealing with settlements in favour of children. These provisions substantially modify, in circumstances to which they are applicable, the effect of Cases IV and V; but their operation is not confined to the income dealt with in those cases, and it is thought more convenient to consider these enactments as a whole, in the chapter on "Total Income."[26]

"Domiciled": "Ordinarily resident"—The amount of an individual's liability in respect of income from securities and from stocks, shares and rents, may, as has been seen, depend on whether he is "domiciled." or whether, being a British subject, he is "ordinarily resident" in the United Kingdom. The law of domicil in general applies for income tax purposes; its principles have been specifically applied in one case,[27] and the subject is glanced at in some of the cases decided upon questions of residence.[28]

"A man can have residences in more countries than one, although he can only have one domicil."[29] And the mere fact of a man possessing a residence in the United Kingdom may make him liable to income tax, although he may not have visited this country within the year of assessment.[30] Such a fact taken by itself is, perhaps, not sufficient to make a British subject (though domiciled in the United Kingdom) liable to pay tax on the whole of his income from securities, stocks, shares and rents. But, on the other hand, the possession of a residence is not essential in order to make him both "resident" and "ordinarily resident." Indeed, there appears now to be little distinction between those terms for income tax purposes, except that which is indicated in the sentences quoted below.[31]

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[24] Sched. D, Misc. Rules, r. 2, see p. 482; see also Chap. 12, p. 267.
[25] See Chap. 5, pp. 94, 95. [26] Act of 1936, ss. 18, 21; see pp. 579, 584.
[27] *I. R.* v. *Cohen* (1937), 21 Tax C. 301. Cf., in Eire, *Iveagh* v. *Revenue Commrs.*, [1930] I. R. 386. A company is domiciled where it is incorporated: *Gasque* v. *I. R.*, [1940] 2 K. B. 80.
[28] See p. 266.
[29] *Per* ROBERTSON, L.P., in *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. 107.
[30] See *Rogers* v. *I. R.* (1879), 6 R. 1109, and the other cases cited therewith, p. 267.
[31] The phrases "ordinary residence," "ordinarily resides," occur also in Sched. D, Misc. Rules, r. 4, see p. 482, and General Rules, r. 3, see p. 487; Sched. E, r. 18 (5), see p. 487; and "ordinarily resident" appears in s. 18 of the Act of 1936, see note [26].

"Ordinary residence connotes residence with some degree of continuity and apart from accidental or temporary absences."[32] "The converse to 'ordinarily' is 'extraordinarily,' and part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinary.'"[33] An individual, therefore, may be "ordinarily resident" who has given up a dwelling-house in England on his partial retirement from business and has a home in Eire but resorts to this country at monthly intervals, to discharge his duties as director of an English company, though each separate visit lasts only about a week;[34] or who having given up the lease of a dwelling-house in this country, afterwards spends several months every year in England for personal and family reasons;[35] or who spends some months here in one year and makes arrangements for setting up a school, and in subsequent years makes a permanent residence in England;[36] it was not necessary to establish "ordinary residence" that the persons concerned should live here for more than half the year. In the above cases the visitors stayed largely or wholly in hotels: the case for "ordinary residence" is still stronger where a person owns a house, and spends nearly half the year, in this country.[37] A person of unsound mind who came on a visit and was detained for 52 years was "ordinarily resident."[38]

On questions of domicil and ordinary residence arising under these rules there is an appeal to the Special Commissioners, who may be required to state a case on a point of law for the High Court.[39]

Ownership of the Assets Immaterial—In order to make a person chargeable under Case V, it is not necessary that he should own the corpus of the foreign possession. Income derived from assets in a place out of the United Kingdom may be a foreign possession, although it accrues to a person who does not own those assets. Therefore where the assets were vested in trustees residing in this country, who at their discretion made remittances out of the income for the education and maintenance of minors also residing here, that income was held to be a foreign possession and to be properly charged under Case V; as soon as the trustees had exercised their discretion

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[32] *Levene* v. *I. R.*, [1928] A. C. 217, per Lord Cave, L.C., at 225.
[33] *Lysaght* v. *I. R.*, *ibid.* 234, per Lord Sumner, at 243; it may perhaps be suggested that the word "occasionally" affords a truer converse.
[34] *Lysaght's Case*, above.
[35] *Levene's Case*, above; *Reed* v. *I. R.*, [1926] S. C. 589; 10 Tax C. 673.
[36] *Elmhirst* v. *I. R.*, [1927] 2 K. B. 251, see p. 274.
[37] *Paul* v. *I. R.*, 1928 S. C. 206; 13 Tax C. 443.
[38] *In re Mackenzie*, [1940] W. N. 280; 57 T. L. R. 107, which arose on the condition of a Treasury issue of stock under the Finance (No. 2) Act, 1915, s. 47. The above cases are again referred to on p. 286.
[39] Act of 1924, s. 27, see p. 523.

(even if before that time the children's interest was only contingent), the income became the income of the children.[40]

It appears to be true also of income arising from securities that ownership of the assets is not necessary to make a person liable under Case IV.[41] And it follows that any question whether the whole income is taxed or only the part received in this country, depends on the status of the recipient of the income, not of the owner of the assets.[42]

Computation of Income Taxable—It has been seen above that in certain circumstances tax is charged on the whole of the profits, and in others only on the portion brought to this country. The provisions for computing the amount of assessment apply, therefore, according to those varying circumstances, either to the whole of the income, or to the amount received in this country, in the respective years referred to.[43] The tax is in general to be computed on the income, or on the amount received in this country, in the year preceding the year of assessment.[44] But in the first and the second years of assessment in which the income arises, or an amount is received in this country, the tax is to be computed on the income or receipts of the year of assessment itself;[45] unless the income first arose, or an amount was first received in this country, on April 6 in the first year, in which case the tax for the second year is computed on the income or the receipts of the first year, but the person charged is entitled, on giving the notice indicated, to have it computed on the income or the receipts of the second year.[46] A similar notice, if the first year of assessment was a broken year, will entitle him to have the tax computed on the income or the receipts of the third year.[46] In a year of assessment in which a source of income is newly acquired or added to, tax in respect of that source or addition is to be computed separately.[47]

Where any person ceases during the year of assessment to possess a particular source of income (or part of such a source), the tax is computed upon the income, or the receipts in this country, from April 6 to the date on which possession ceased.[48]

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[40] *Drummond* v. *Collins*, [1915] A. C. 1011, see p. 233. See also *Baker* v. *Archer-Shee*; *Archer-Shee* v. *Garland*, p. 220.

[41] See *Drummond* v. *Collins*, above.

[42] Cf. *Williams* v. *Singer*, p. 233.

[43] See Act of 1926, s. 29 (1) and proviso (b) (iv), p. 498.

[44] Act of 1926, s. 29 (1); *Gibson* v. *Mitchell*, [1942] 2 K. B. 217 (C.A.). With the provisions of this sub-section and of its proviso (b), cf. those of r. 2 of Case III, p. 479.

[45] Proviso (b) (i) (ii) The proviso does not apply to the case of a person commencing to reside in this country, and receiving income from the same foreign possession as before he was so resident: *Back* v. *Whitlock*, [1932] 1 K. B. 747; *Carter* v. *Sharon* (1936), 20 Tax C. 229; cf. *Fry* v. *Burma Corporation, Ltd.*, [1930] A. C. 321, see p. 146. See also *Elmhirst* v. *I. R.*, [1937] 2 K. B. 251, p. 222.

[46] Proviso (b) (iii).

[47] S. 30, proviso (ii), see p. 531.

[48] S. 30, proviso (i), read with s. 31; note the provision for retrospective assessment in s. 31 (1) (b); cf. p. 181.

Apart from the new acquisition, or the cesser, of any source of income charged under Case IV or Case V, the whole of the profits or income in respect of which any person is chargeable under either of these cases may be assessed and charged in one aggregate sum.[49]

The above provisions, so far as they provide for assessment on the income, or the receipts in this country, of an earlier year are applicable although no income is derived, or received in this country, from the source in the year of assessment;[50] but if the source is not possessed at any time during the year, there is no liability to tax.

If a sum has been received in this country in the year according to which the income is computed, the fact that it may have been received and have accumulated abroad in previous years is immaterial.[51]

A sleeping partnership in a firm and a holding of shares in a limited company in the same Dominion are separate sources of income taxable under Case V, although both are held by the same set of trustees;[52] but where a British company holds shares in different foreign companies, the whole of the shares so held constitutes a single source of income.[53] If more such sources than one are held throughout a year of assessment, the holder will be assessable on the aggregate profits from both in the preceding year;[54] the fact of their being separate, however, affects the computation, as above stated, where one source or another is acquired or discontinued.

The provisions relating to "funding bonds" and to transactions in securities and in rights to receive interest, etc., which are contained in the Acts of 1937 and 1938 are applicable under Cases IV and V as for "all" other "purposes of the Income Tax Acts."[55]

Securities—The following passage indicates the meaning of the word "securities" in the Income Tax Acts:—

"The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such

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[49] S. 30, substantive paragraph, but this does not authorise the aggregation of income from foreign "securities" (see below) with income chargeable under Case V.

[50] Act of 1928, s. 22 (see p. 528), which supersedes the decision in *Whelan* v. *Henning*, [1926] A. C. 293; see also p. 4.

[51] See p. 212, note [14]; contrast *Simpson* v. *Maurice's Executors* (1939), 45 T. L. R. 581.

[52] *I. R.* v. *Dryedale's Trustees* (1928), 13 Tax C. 865; other cases in connection with what may constitute separate sources of income have been decided on War Stocks under Case III, see p. 211.

[53] *Diggines* v. *Forestal Land, etc. Co., Ltd.*, [1931] A. C. 280. The reasoning of the decision last cited was disapproved.

[54] S. 30, see p. 531; the two cases last cited were decided with regard to years to which ss. 22 and 30 of the Act of 1926 did not apply.

[55] Act of 1938, s. 35; Act of 1937, s. 12 (1), Act of 1938, s. 24, see pp. 65—67.

as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No doubt the meaning of the word may be enlarged by an interpretation clause contained in a statute . . . or the context may show as in certain cases relating to the construction of wills, that the word is used to denote, in addition to securities in the ordinary sense, other investments such as stocks or shares. But in the absence of any such aid to interpretation, I think it clear that the word 'securities' must be construed in the sense above defined, and accordingly does not include shares or stock in a company."[56]

Accordingly, an agreement by a foreign company to repay a loan with interest to a creditor in the United Kingdom, who holds no mortgage or collateral security, but only certain negotiable promissory notes, and who can have recourse only to the direct personal responsibility of the debtor in order to enforce the agreement, is not a foreign security, and the interest is not chargeable under Case IV, but only on the amount received in this country, under rule 2 of Case V.[57]

An investment company residing in this country is taxable under Case IV on the interest of money lent on the security of land, or of debentures secured by mortgages of land, in a foreign country, although such lending forms part of the company's trade;[58] but if such a company is not resident in the United Kingdom it is not taxable on income from such a source.[59]

"**Other Possessions**"—As regards the possessions covered by rule 1 of Case V it will depend on the circumstances indicated above[60] in what cases the whole income is taxable, and in what cases only the receipts in the United Kingdom.

Stocks or shares in a trading company are not "securities."[61] Income arising from them is only assessable under Case V if the stocks or shares are "in any place out of the United Kingdom." "The question therefore arises whether their locality is to be determined by the company's place of incorpora-

[56] *Singer* v. *Williams*, [1921] 1 A. C., *per* Viscount CAVE, at 49.

[57] *Lord Manton's Trustees* v. *Steele* (1927), 11 Tax C. 549; from the judgments of ROWLATT, J., at 556, and Lord HANWORTH, M.R., at 559, it appears that the decision to the contrary in *Hudson's Bay Co.* v. *Thew*, [1919] 2 K. B. 632 (where the agreement was under seal) is not correct. In *Lomax* v. *Peter Dixon, Ltd.*, see p 218, notes of a similar kind were held not to be securities, but the interest was not taxable, because unpaid.

[58] *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 2 Tax C.1 65 (see p. 232), where the trade profits (as such) were taxable under Case I; *Butler* v. *Mortgage Co. of Egypt* (1928), 139 L. T. 29, where they were taxable under Case V, r. 2, as income from a foreign possession. The Crown's option to decide under which case it shall assess the tax is considered, p. 94.

[59] *Egyptian Delta Land and Investment Co., Ltd.* v. *Todd*, [1929] A. C. 1, see p. 82.

[60] See p. 219.

[61] *Bartholomay Brewing Co.* v. *Wyatt*, [1893] 2 Q. B 499, see p. 86; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, see p. 87, *per* FLETCHER MOULTON, L.J., at 104; *Singer* v. *Williams*, [1921] 1 A. C. 41.

tion and registration or by its place of residence and trading. . . . The latter is the true view. 'Shares in a company,' said Sir JAMES HANNEN in *In the Goods of Ewing*,[62] 'are locally situate where the head office is'; and I think this means that they are locally situate where the company's principal place of business is to be found. A share or a parcel of stock is an incorporeal thing, carrying the right to a share in the profits of a company; and where the company is, there the share is also and there is the source of any dividend paid upon it."[63] "The Crown has argued that the share is necessarily a possession in the place where the corporation is incorporated. For the purposes of the Income Tax Acts, and in a case where the foreign corporation is resident here, the proposition is unsound. . . . The company when resident here is not foreign . . . and its capital and the members' interest in the capital is not foreign."[64]

Accordingly, while a company registered in England[65] controlled and managed in this country the business of an American company, the American company being therefore resident in England, the stock held by the English in the American company was not a foreign possession; and although the management and control of the business of the American company were subsequently transferred to America, and the stock then became a foreign possession, the dividends on that stock received by the English company before the transfer could not be brought into computation.[66] Any holding in a foreign company may be a possession within rule 1 of Case V.[67] Thus, the holder of preference shares in an Indian company is chargeable in respect of the preference dividend as a whole, although some part of the company's profits consists of dividends from British companies which have been taxed on their own profits.[68]

A company which is registered and resident here is chargeable under Case V, rule 1, in respect of the whole of the rent received in a foreign country for land there situate, although the management of its business—including the receipt of such a rent—is carried on abroad.[69] On the other hand, a company

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[62] (1881), 6 P. D. 19, at 23.

[63] *Bradbury* v. *English Sewing Cotton Co.*, [1923] A. C. 744, *per* Lord CAVE, L.C., at 753; see *Swedish Central Ry.* v. *Thompson*, [1925] A. C. at 504, and *Baels* v. *Public Trustee*, [1926] 1 Ch. 863, 869.

[64] [1923] A. C. *per* Lord WARRINGTON, at 767.

[65] See *American Thread Co.* v. *Joyce* (1913), 6 Tax C. 1, 163, p. 84.

[66] *Bradbury* v. *English Sewing Cotton Co.*, above; the decision in this case is not inconsistent with that in *Brassard* v. *Smith*, [1925] A. C. 371 (see *per* Lord DUNEDIN in *Swedish Central Ry.* v. *Thompson*, below); and see *Baels* v. *Public Trustee*, above. See also *R.* v. *Williams*, [1942] W. N. 111.

[67] As in the capital of a German G.m.b.H.: *Rydl* v. *Du Bois Co., Ltd.* (1933), 18 Tax C. 431.

[68] *Barnes* v. *Hely Hutchinson*, [1940] A. C. 81; subject, of course, to r. 3 of Case V where it is applicable, see p. 219. And see p. 184, note [53].

[69] *Swedish Central Ry.* v. *Thompson*, [1925] A. C. 495, see p. 82.

which, though registered in this country, is not resident here is not chargeable in respect of any part of the rent of land in a foreign country.[70]

Alimony paid under a divorce decree of a foreign Court is income from a foreign possession;[71] so is an annuity paid under a deed of separation executed in India.[72] Compensation for war injuries paid monthly by a foreign government may not be income at all.[73]

Premiums paid on repayments of a loan made to a company abroad and calculated on a yearly basis may be income from a foreign possession;[74] and so may interest forming part of each repayment and calculated on the amount of the whole loan which remains unpaid at the time.[75]

Deductions and Allowances—Where the charge is upon the full amount of the income, whether received in the United Kingdom or not, the persons liable are entitled to deductions and allowances,[76] as if the income had been received wholly in this country.[77] Moreover, a deduction is allowed of any sum paid as income tax in the place where the income has arisen.[78] This is, however, subject to an exception as to income tax levied in a British possession or protectorate, relief in this case being otherwise provided; indeed, an addition must be made for any such Dominion tax.[79]

Where any "annual interest," "annuity," "or other annual payment "[80] is payable to a person not resident in the United Kingdom out of that part of the income which is not brought to this country, the amount of such payment is excluded from charge; but if the payment, though made to a resident abroad, is made out of money brought to this country, or if it is made to a resident in this country, there is no deduction on this account from the assessment.[81]

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[70] *Egyptian Delta Land, etc. Co* v *Todd*, [1929] A. C. 1, above. The results stated in the text follow severally from the decisions in the two cases last cited on the "residence" of the companies, which are considered in Chap. 5, pp. 85, 86. The writer has not attempted to reconcile them.

[71] *I. R.* v. *Anderström*, 1928 S. C. 224; 13 Tax C. 482.

[72] *Chamney* v. *Lewis* (1933), 17 Tax C. 318.

[73] *Laird* v. *I. R.* (1929), 14 Tax C. 395.

[74] *I. R.* v. *T. Nelson & Sons, Ltd.*, 1938 S. C. 816; 22 Tax C. 175.

[75] *Beck* v. *Lord Howard de Walden* (1940), 23 Tax C. 384; see *Secretary of State for India* v. *Scoble*, p. 194.

[76] As to allowances and deductions in favour of individuals, see pp. 8 *sqq.*; in favour of assurance and other companies, see p. 213.

[77] Case IV, r. 1; Case V, r. 1, see pp. 480, 481.

[78] But there is no deduction for U. S. A. income tax so far as it is assessed on profits from realisation of investments: *Scottish American, etc., Ltd.* v. *I. R.*, 1938 S. C. 234. The effect on these points of the No. 2 Act of 1945 is indicated in the Supplement.

[79] Finance Act, 1920, s. 27 (4), see p. 468. The relief for Dominion income tax is afterwards calculated according to the other provisions of s. 27. See note [78].

[80] As to the meaning of these expressions, see pp. 186, 189.

[81] The payer is in general entitled in making the payment to deduct income tax on the amount paid, see pp. 185 *sqq.*

What has been said above as to Dominion income tax applies also where only that part of the income received in this country is chargeable.[79]

In practice, it is understood that allowances are also made for costs of collection and remittance, and (in the case of rents) for costs of repairs, management and insurance. The allowances and charges provided by the Finance Act, 1944, and the Income Tax Act, 1945, will also be applicable.[81a]

Trades, Professions, Offices, etc.— One of the most important kinds of "income arising from possessions out of the United Kingdom," which is charged under rule 2 of Case V, is income immediately derived by an individual[82] or a company[83] residing in the United Kingdom, from a trade or profession carried on by either of them (solely or in partnership), but in no sense carried on in this country. The tax in such a case is charged, not on the whole income, but on the actual sums annually received in this country.[84] In estimating the income there is no deduction for Dominion income tax, on the contrary, an addition is made, equivalent to the amount of income tax borne or paid in the Dominion.[85]

Where the "head and seat and directing power" of a trade (whether owned by an individual or a company) are situate in this country, the whole of its profits are charged with income tax under Case I of Schedule D, even though a part (possibly the greater part) of its trading operations is situate abroad.[86] Such a trade is not a foreign possession of the company.[87]

But if an individual resident in the United Kingdom is a partner in a business carried on wholly in Australia, and takes no share in its management, he is liable to tax only in respect of that part of the profits which he receives in this country.[88] Where a company is registered in England, but its trading operations are situate abroad, and it exercises no directing

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[79] See previous page, notes [78], [79]. [81a] See Chap. 7, and p. 157.

[82] *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, see pp. 80—82.

[83] *Bartholomay Brewing Co.* v. *Wyatt*, *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] 2 Q. B. 499, see p. 225, *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *ibid.*, *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022; as to the residence of companies in the United Kingdom, see p. 79. A holding in a foreign company, however, is a "share" within r. 1, see p. 226, note [87].

[84] Case V, r. 2, read with r. 1 (a), see p. 481; *Bradbury* v. *English Sewing Cotton Co.*, see p. 226. As to the year whose profits are to be taken, and so on, see "Computation of Income Taxable," p. 223. See also Chap. 7, and note [81a] above.

[85] Finance Act, 1920, s. 27 (4), as to relief in such cases, see p. 19.

[86] *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Assn.* v. *Nicholson* (1877), 1 Tax C. 133; *San Paulo Brazilian Ry.* v. *Carter*, [1896] A. C. 31; *Ogilvie* v. *Kitton*, 1908 S. C. 1003; 5 Tax C. 338, see pp. 82, 83, and other cases cited therewith. See also *Swedish Central Ry.* v. *Thompson*; *Egyptian Delta, etc. Co* v. *Todd*, pp. 85, 86.

[87] *San Paulo (Brazilian) Ry.* v. *Carter*, above; *Bradbury* v. *English Sewing Cotton Co., Ltd.*, see p. 226, note [88].

[88] *Colquhoun* v. *Brooks*, above.

power over them, but confides that power to a local board of directors in the country where the trading operations are situate, that company is charged on the income immediately derived from the trade (apart from securities, shares, rents and so on) under rule 2 of Case V, and is liable only to pay tax on so much of that income as is brought to this country.[89] It is submitted that the two last-cited decisions still hold good under rule 2 as amended, and that in any like case the trade (or profession) is "carried on by" the person who immediately derives income from it, in the language of rule 1 (a), even though he may not himself actually manage or direct it; that language being inapplicable only to cases where the trade, etc. is managed or directed by a person such as a trustee or a subsidiary company, separate from the individual, partnership or company entitled to the income.

If, on the other hand, a company "residing" in England holds a rent in a foreign country (although the control and management of its business are also in that country),[90] or holds shares in a foreign company which carries on operations abroad,[91] it is chargeable under rule 1 of Case V on the whole of the income.

The question where the directing power is situate must for this purpose be decided upon the facts of the year of assessment only; the course of business in other years is immaterial.[92]

Income arising from any office, employment or pension out of the United Kingdom is also within rule 2.[93] In the case of an office or employment, the place where the duties are carried out is immaterial,[94] and it is a "possession out of the United Kingdom," if the remuneration is paid in a foreign country, whether the work is done wholly abroad[95] or partly in England.[96] But it is not such a possession, wherever the duties are performed, if the remuneration can only be claimed, and is in fact paid, in England;[97] in the latter case the income is within Schedule E,

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[89] *Mitchell* v. *Egyptian Hotels, Ltd.*, above, note [83]. The distinction between Case I and Case V in this matter appears clearly in the passage cited from Lord SUMNER'S speech, see p. 81, as to the facts, see p. 85. If such a company holds securities, etc., it may be charged under Case IV: *Butler* v. *Mortgage Co. of Egypt* (1928), 139 L. T. 29, see p. 94.

[90] *Swedish Central Ry.* v. *Thompson*, [1925] A. C. 495, see p. 226. Contrast *Egyptian Delta, etc., Ltd.* v. *Todd*, [1929] A. C. 1, p. 227.

[91] *Bartholomay Brewing Co* v. *Wyatt*, *Gramophone and Typewriter, Ltd.* v. *Stanley*, *Bradbury* v. *English Sewing Cotton Co.*, above. See pp. 86, 89; as to what are "shares," see *Ryall* v. *Du Bois Co., Ltd.* (1933), 18 Tax C. 431, p. 226.

[92] *Mitchell* v. *Egyptian Hotels*, [1915] A. C., *per* Lord SUMNER, at 1040; *Bradbury* v. *English Sewing Cotton Co.*, above [83] See p. 481.

[94] *Foulsham* v. *Pickles* [below], as explained in *Bennet* v. *Marshall*.

[95] *Fleming* v. *Wilkinson* (1925), 10 Tax C. 416.

[96] *Bennet* v. *Marshall*, [1938] 1 K. B. 591.

[97] *Foulsham* v. *Pickles*, [1925] A. C. 458. The profits of an office, employment or pension which is a foreign possession are still chargeable under Case V, r. 2, by virtue of the exception contained in s. 18 (1) of the Act of 1922, see p. 508. So also are the voluntary or revocable pensions and annuities made chargeable by s. 17 of the Act

if the holder of the office or employment is resident in this country.[88] A similar test probably applies to pensions, so that these are foreign possessions, and the income arising from them is within rule 2 of Case V, if the income is paid out of the United Kingdom.[89]

Sums received in the United Kingdom—As has been seen, certain classes of individuals, together with assurance companies in respect of income from investments of their foreign life assurance funds, are charged under Cases IV and V with tax only in respect of the sums received in the United Kingdom.[1] And in respect of income from possessions within rule 2 of Case V (whoever the recipient of the income), the sums received in this country only are the subject of tax.[2]

In the case of securities belonging to those individuals and companies, the tax is computed " on the full amount, so far as the same can be computed, of the sums which have been or will be received in the United Kingdom. . . . "[3] In the case of " other possessions " belonging to those individuals and companies, and of possessions within rule 2 (to whomsoever belonging), it is computed on " the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account," and so forth.[4] The elaborate language employed here makes it clear that money arising and payable in this country is not a sum received in the United Kingdom as arising from a foreign possession for the purposes of Case V;[5] the same reasoning does not appear to apply to rule 2 of Case IV, but at any rate the use in that rule of the shorter expression quoted shows that every form of receipt specified in Case V is intended to be included in the purview of Case IV.[6] Income from securities or other possessions placed at the disposal of the Treasury in pursuance of the Financial Powers (U.S.A. Securities) Act, 1941, is only to be treated as received in or remitted to the United Kingdom to the extent that it becomes " available for use " here.[7]

The language of Case V, in spite of its apparent breadth, applies only to income remittances; it does not charge with tax

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of 1932, if paid by or on behalf of a person outside the United Kingdom, see p. 242, note [17]

[88] *Eaton-Turner* v. *McKenna*, [1937] A. C. 162, see p. 241

[89] As regards pensions payable in this country, see p. 62 and pp. 240, 242.

[1] Case IV, r. 2, Case V, rr. 2, 2. See Supplement, pp. 775 *sqq*

[2] Case V, r. 2.

[3] Case IV, r. 2, see p. 449

[4] Case V, r. 2.

[5] *Fouldsham* v. *Pickles*, [1925] A. C. 458, see p. 229.

[6] The rules of the corresponding fourth and fifth cases of the Act of 1842 differ in a somewhat similar way; but the decisions upon them, which are cited below, take little account of this difference.

[7] 4 & 5 Geo. 6, c. 36, s. 2 (7), see p. 664, Regulations made thereunder, see p. 748.

remittances made wholly out of capital.[8] Apart from that last stated, the principles determining what constitutes the receipt of sums in the United Kingdom have been laid down in a series of cases[9] which arose chiefly in connection with assurance and investment companies where the Crown had exercised its option to charge the tax under Case IV or Case V instead of Case I.[9]

"A sum of money may be received in more ways than one, *e.g.*, by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the statute which your Lordships have to interpret. But to constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money. A mere entry in an account which does not represent such a transaction does not prove any receipt, whatever else it may be worth."[10]

If, therefore, the sum is not actually brought to this country in any form, whether as a remittance or as credit, or as property (and is not treated by its recipient as having been so brought), the mere fact that the sum appears in the accounts of the company, is shown in the annual statements presented to the shareholders, and is taken into account in calculating the profit available for distribution or investment, does not constitute a receipt (or even a "constructive receipt") in the United Kingdom.[11]

On the other hand, a company cannot by the form of its book-keeping defeat the right of the Crown to tax upon a sum which is actually brought to this country, or which, in order to save the expense of cross-remittances is not actually brought here, but is, nevertheless, treated by the company as having been brought to this country. An investment company received money on account of interest by the hands of its agents in

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[8] *Kneen* v. *Martin*, [1935] 1 K. B. 499. A remittance from an overdrawn account, may be an income remittance. *Fellowes-Gordon* v. *I R* (1935), 19 Tax C. 683.

[9] These decisions have no bearing where the charge is made under Case I: *Liverpool and London and Globe, etc.* v. *Bennett*, see p. 94; [1912] 2 K. B. 53, 60.

[10] *Gresham Life, etc* v. *Bishop*, [1902] A. C. 287, *per* Lord LINDLEY, at 296; see p. 95, note [10]. The two cases of *Hall* v *Marriane* (1933), 18 Tax C. 148; (1935), 19 Tax C. 582, illustrate what is not, and what is, a receipt in this country. See also *Walsh* v. *Randall* (1940), 23 Tax C. 557.

[11] *Forbes* v. *Scottish Provident, etc.*; *Forbes* v. *Scottish Widows, etc.* (1895), 23 R. 322; 3 Tax C. 443; *Standard Life, etc.* v. *Allan* (1901), 3 F. 805; 4 Tax C. 446; *Gresham Life, etc.* v. *Bishop*, above. The last cited case impliedly overrules *Universal Life, etc.* v. *Bishop* (1899), 4 Tax C. 139.

America; but it also borrowed money in this country on debentures for investment in America; instead, therefore, of bringing the interest-money home, and sending the whole of the borrowed money out, it allowed the actual sum received as interest to remain in America, and sent out so much less of the borrowed money, while retaining out of the borrowed money a sum equivalent to the interest that would otherwise have been sent home. This sum was held to have been received in this country; the company had in effect performed its remittances for itself.[12] The money actually retained in this country was received in the shape of capital, but that fact was held to make no difference. Nor does it make any difference that remittances made to this country of interest on securities out of the United Kingdom are described by the company as repayments of money previously sent out of this country for investment; "the mere calling it capital will not make into capital that which is essentially and in truth profit."[13] Again, if a company out of interest accumulated abroad purchases bearer bonds abroad, but brings them to this country and sells them here, the receipt of the proceeds of sale in this country constitutes a receipt of the interest in this country; it is immaterial that the interest accumulated before the year of computation, so long as the purchase price was received in that year.[14] A similar rule applies to interest-bearing "certificates of indebtedness" issued in lieu of cash dividends, and afterwards redeemed.[15]

The cutting of coupons from bearer bonds kept in this country does not constitute the receipt of a sum in the United Kingdom, if the coupons are sent abroad and presented for payment and the money is not remitted home, but allowed to remain abroad.[16]

"The rule does not require that the sum [received in the United Kingdom] should have been received by the person entitled to the income. . . . Sums paid to third parties by or at the request of the party so entitled have to be taken into account." provided, of course, they are not paid as income to which the third party is entitled.[17]

The book-keeping of the bankers who make the remittance is not conclusive that it is made out of income from foreign possessions which has not yet borne tax.[18]

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[12] *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165, see p. 225. This decision is compatible with the general principle laid down in *Gresham Life, etc.* v. *Bishop*, above; see *Scottish Widows, etc.* v. *Farmer*, below.

[13] *Scottish Provident, etc.* v. *Allan*, [1903] A. C. 129; see per Lord DAVEY, at 137.

[14] *Scottish Provident, etc.* v. *Farmer*, 1912 S. C. 452; 6 Tax C. 34. See "Computation of Income Taxable," p. 223.

[15] *Assd. Insulation Products, Ltd.* v. *Golder*, [1944] 2 All E. R. 203 (C. A.); see also *Pattuck* v. *Lloyd* (1944), 171 L. T. 340.

[16] *Scottish Widows, etc.* v. *Farmer*, 1909 S. C. 1372; 5 Tax C. 502; but see p. 65.

[17] *Timpson's Executors* v. *Yerbury*, [1936] 1 K. B. 645; 154 L. T. 283, see p. 290; and per ROWLATT, L.J. See also *Carter* v. *Sharon*, p. 220.

[18] *Duke of Roxburghe's Executors* v. *I. R.*, 1926 S. C. 363; 20 Tax C. 714.

Assessment through Guardian or Trustee—A guardian who receives income from foreign possessions (or securities) on behalf of children resident in this country is liable to pay tax on their behalf under Case V[19] (or Case IV). It is not necessary that the guardian should have control of the assets, if he in fact receives and controls the income.[19]

Conversely, where the beneficiary who receives and controls the income from foreign securities or possessions is not resident in this country the fact that the trustees in whom the assets are vested are resident here does not affect the liability to tax, or the amount of that liability. And if in such a case the beneficiary is not domiciled in the United Kingdom and no part of the income is received in this country, there is no liability to tax under Case IV or Case V.[20] If any part of the income had been received in this country, it would have been assessable in the name of the trustee.[21]

Where the income from foreign possessions is received and distributed in this country by trustees, they cannot make any deduction for the expenses of managing and distributing the income.[22]

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[19] *Drummond* v. *Collins*, [1915] A. C. 1011, see p. 223, as to assessment generally in the name of a guardian or trustee, see p 269

[20] *Williams* v. *Singer*. *Pool* v. *Royal Exchange, etc.*, [1921] 1 A. C. 65, see p. 223

[21] See pp 219 and 249.

[22] *Aikin* v. *Macdonald's Trustees* (1894), 22 R. 88, 3 Tax C. 306.

CHAPTER 10

MISCELLANEOUS PROFITS: SCHEDULE D, CASE VI

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Profits Chargeable under Case VI—Schedule D contains words which are intended to prevent any profits not specifically charged by any other Schedule from escaping taxation for that reason.[1] Those words refer first to "interest of money and annuities" which (so far as not covered by Schedules C and E) are now charged by Case III of Schedule D;[2] next they refer to "all other annual profits or gains not charged" under any other Schedule; so far as these are "not falling under any of the foregoing Cases." I—V of Schedule D, they are charged under Case VI.[3]

In a case which raised a question of liability to tax in respect of casual profits, ROWLATT, J., said: "The word 'annual' here can only mean 'calculated in any one year,' and 'annual profits or gains' mean 'profits or gains in any one year or years as the succession of years comes round'."[4] If this be so, the presence of the word 'annual' affords little guidance as to the scope of Case VI; but it is, at any rate, clear that that case is confined to income receipts and does not create a liability to tax in respect of an appreciation of capital.[5] Accordingly, the difference between the price paid on the purchase of goods or property, and the price received on the sale of the goods or property, can only be taxed if the purchase and sale are carried out in the course of a trade. Where a person engaged in the building trade as an employee had bought certain lands and houses at different times and had sold them for higher prices

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[1] Sched. D, 1 (b), see p. 472

[2] See Chap. 5; and Case III, r. 1 (a), p. 479; this includes annuities and yearly interest, and other matters which were not included by the second rule of the third case in Sched. D in the Act of 1842, such matters are therefore not now within the scope of Case VI

[3] Sched. D, 1 (b), read with Case VI, see p. 472

[4] *Ryall* v. *Hoare*, see p. 236, [1923] 2 K. B. at 455. This passage was approved by Lord CAVE, L.C., in *Martin* v. *Lowry*, see p. 70; [1927] A. C. at 316, but Lords SUMNER and CARSON, while accepting the decision in *Ryall* v. *Hoare* as correct, guarded themselves against appearing to agree with all the instances and observations of the learned Judge. See also *per* Lord BUCKMASTER in *Jones* v. *Leeming*, [1930] A. C. 419.

[5] *Jones* v. *Leeming*, [1930] A. C. 415; *Earl Haig's Trustees* v. *I. R.*, p. 209. Cf. the similar distinction under Case I, pp. 104—109; and see *per* ROWLATT, J., in *McKinley* v. *Jenkins* (1928), 10 Tax C. 272, at 404, p. 105

than he gave, he was not taxable under Case VI in respect of the surplus;[6] and trustees who received certain sums in respect of the publication of War Diaries, which largely exhausted their value for that purpose, were not so chargeable.[7] Nor was any tax so leviable where options for the purchase of two rubber estates had been acquired and sold together to a company.[8] So, when the payment of moneys to a prospecting company resulted in allotments of shares in mining companies which were subsequently promoted, and the face value of the shares was greater than the sums paid, tax was not chargeable in respect of the differences.[9] On the other hand,[10] the receipts derived from a series of speculations in future delivery contracts of cotton were taxable under Case VI; there was a finding that these did not constitute a trade, but they were not isolated transactions, and had been entered into with a view to producing income. An award of a capital sum as compensation for war injuries does not bring with it a liability to tax under Case VI, though that sum is paid in monthly instalments.[11]

The profit which it is sought to charge under Case VI must be " really a profit or gain within the meaning of the Income Tax Code."[12] A mere enjoyment is, therefore, not taxable under this Case, or under any other provision;[13] nor is a voluntary gift which is not connected with the holding of an office.[14] A fishery board was held not to be taxable in respect of the net receipts derived from fishing licences, or from penalties paid by persons fishing without a licence, because these were not analogous to the profits of a trade:[15] but it is doubtful if this decision still stands.[16]

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[6] *Pearn* v. *Miller* (1927), 11 Tax C. 610; the case was remitted to the Special Commissioners for a finding whether a trade was carried on, and they found that it was not: (1927), 6 R. & I. T. 302.

[7] *Earl Haig's Trustees* v. *I. R.*, 1939 S. C. 676, distinguished in *Hobbs* v. *Hussey*, [1942] 1 K. B. 49, where a profit from the sale of serial rights in a single article was held to be a " payment for services ", the decision was based upon *dicta* in *Ryall* v. *Hoare*, which are referred to in note [4], above. In *Beare* v. *Carter*, [1940] 2 K. B. 187, a lump sum paid to an author for a licence to publish a new edition of his book was not subject to tax.

[8] *Jones* v. *Leeming* (above); *Williams* v. *Davies*, [1945] 1 All E. R. 304. Here also the Commissioners found that the transaction was not in the nature of trade.

[9] *Whyte* v. *Clancy*, [1936] 2 All E. R. 679.

[10] *Cooper* v. *Stubbs*, [1925] 2 K. B. 753. *Townsend* v. *Grundy* (1933), 18 Tax C. 140; see note [96], p. 71. *Cooper* v. *Stubbs* was distinguished, but treated as correct, by the Lords in *Jones* v. *Leeming*, above.

[11] *Laird* v. *I. R.* (1929), 14 Tax C. 395, see p. 227. Cf. *Foley* v. *Fletcher*, and cases cited therewith, p. 194.

[12] *Att.-Gen.* v. *Black* (1871), L. R. 6 Ex. 308, see p. 139. *Tennant* v. *Smith*, [1892] A. C. (see p. 245), *per* Lord MACNAGHTEN, at 183, *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484. *Jones* v. *Leeming*, [1930] A. C. 415, *per* Lord DUNEDIN, at 422. Thus, in *Roberts* v. *Belhaven's Executors* (1925), S. L. T. 486, and *Shingler* v. *Williams* (1933), 49 T. L. R. 221 (see p. 180), payments for the right to remove spoil or slag have been held not to be taxable.

[13] *Tennant* v. *Smith*, above.

[14] *Turner* v. *Cuxon* (1888), 22 Q. B. D. 150, see p. 240; as to annuities, see Case III and Chap. 8.

[15] *Severn Fishery Board* v. *O'May*, above.

[16] In *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540 (see p. 236), it was distinguished by two, and disapproved by two, of the five Lords constituting the House.

Profits of the same nature as those formerly grouped under No. III of Schedule A[17] are, however, chargeable under Case VI of Schedule D, if they are not profits of any of the "concerns" referred to in No. III;[18] and, therefore, it was held that contributions made by certain railway companies under compulsion of statute to the upkeep of an inland navigation were chargeable under Case VI, if not under No. III.[19] A harbour conservancy authority, which does not own the soil of the harbour, was not taxable under No. III of Schedule A;[20] but it is liable to tax on the net revenue derived from its shipping dues under Case VI of Schedule D.[21]

Assessments made under Case VI, as an alternative to Case I, have been upheld (without a decision as to which case was the more appropriate) in relation to the receipts of a hospital from letting rooms for entertainment,[22] of a golf club from visitors' green fees,[23] and of a farmer from the services of a stallion sent out from the farm.[24]

As to most kinds of taxable profits, there is some more specific Schedule or Case which renders the application of Case VI of Schedule D either unnecessary or inappropriate; but certain classes of matters may be mentioned to which this Case applies more particularly. Profits made by the letting of a furnished house are, in practice, taxed under Case VI: where this is done, no deduction is allowable for rent paid by the lessor in order to provide himself with another house during the letting of his own.[25] A commission received for guaranteeing an overdraft with a bank,[26] a commission for underwriting an issue of shares,[27] sums paid to a solicitor for obtaining, or for himself making, loans to meet the purchase price of property,[28] a sum paid under a contract to an architect for services already rendered in connection with the purchase of an estate,[29] and receipts from

[17] See Chap. 3

[18] *Att.-Gen.* v. *Black*, above.

[19] *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449, see p. 140

[20] *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213, see p. 140

[21] *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540

[22] *Cowan* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, see p. 71, and see p. 287. See also *Brighton College* v. *Marriott*, [1925] 1 K. B. 312, *per* Scrutton, L.J., at 327.

[23] *Carlisle and Silloth Golf Club* v. *Smith*, [1912] 2 K. B. 177, [1913] 3 K. B. 75 (C. A.), see p. 72, distinguished in *Croft* v. *Sywell Aerodrome, Ltd.*, [1942] 1 K. B. 317 (C. A.), see p. 71, where there was held to be no liability under Case VI.

[24] *Malcolm* v. *Lockhart*, [1919] A. C. 463, as explained in *Lord Glanely* v. *Wightmen*, 17 Tax C. 634, see p. 58.

[25] *Wylie* v. *Escott* (1912), 6 Tax C. 128, in *Martin* v. *Lowry* (see p. 70), Lord Sumner points out that liability to tax was admitted in *Wylie's Case*. See [1927] A. C. 317. See also *Shop Investments, Ltd* v. *Street* p. 71

[26] *Rydl* v. *Hoare*, [1923] 2 K. B. 447, see note [4] on p. 234. *Sherwin* v. *Barnes* (1931), 16 Tax C. 278. These cases were not followed where a company had undertaken to pay the dividend of another company in return for an allotment of shares, the whole transaction formed part of a larger arrangement: *Trenchard* v. *Bennet* (1933), 17 Tax C. 420

[27] *Lyons* v. *Coucher* (1926), 10 Tax C. 438.

[28] *Wilson* v. *Maunsell* (1937), 21 Tax C. 178.

[29] *Brackleby* v. *Merricks* (1934), 18 Tax C. 576. Contrast *Fenston* v. *Johnstone* (1940), 23 Tax C. 29, where there was a partnership and not a contract for services.

the sale of nominations to service by a stallion.[30] are taxable under Case VI; as is the difference between an amount advanced for the erection of houses and the value of the ground rents created and conveyed to the lenders in satisfaction of the advance.[31] So also are profits from grazing cattle on lands which are not in the occupation of the grazier where this is not a part of the necessary operations of his farm;[32] but if, following the usual custom, sheep are sent away from a Highland farm to be fed during the winter months, Case VI does not apply to the profits so made.[33]

Profits made by the letting of non-rateable machinery are chargeable with tax under Case VI.[34] So also are interest in the case of certain transactions in securities[35] and (where the tax cannot be satisfied by the tender of bonds) interest treated as paid by the issue of funding bonds.[36] Income (unless taxed at the source), and capital sums, which are treated as income of the settlor under provisions of the Act of 1938, are chargeable under Case VI:[37] as well as any excess of relief ascertained upon the completion of an administration,[38] or upon apportionment of "child" relief.[39]

Payments not Charged before Passing of Annual Act—With regard to half-yearly or quarterly payments made on account of interest, dividends, or other annual profits before the passing of the yearly Income Tax Act, if these have been paid without charge or deduction of tax,[40] or if the tax has not been charged or deducted at the rate ultimately imposed by that Act when passed, it is expressly provided that the payments are to be charged, under Case VI of Schedule D, with the tax or the balance of the tax that remains due. For this purpose the agents (if there are any such) entrusted with the making of the payment are to furnish the Commissioners of Inland Revenue with a list of the payees and of the amounts paid to them.[41]

The language of this enactment[41] is remarkably loose; it is coupled with another provision which enables in similar circumstances any person liable to pay any rent, interest, annuity, or other annual payment, to make in arrear his full

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[30] *Leader* v. *Counsel*, [1942] 1 K. B. 364.
[31] *Ruskin Investments, Ltd* v. *Copeman*, [1943] 1 All E. R. 378 (C. A.).
[32] *McKenna* v *Herlihy* (1920), 7 Tax C. 620, see p. 59; *Donald* v. *Thomson*, 1922 S. C. 237; 8 Tax C. 272. But if the grazier is charged under Case I in respect of his farming (see p. 72), there may be no need for an assessment under Case VI.
[33] *I. R.* v. *Marshall and Mitchell*, 1929 S. C. 136, cf. the preceding note.
[34] Act of 1936, s. 22 (2), see p. 587. As to income from assets transferred abroad, see p. 721.
[35] Act of 1937, s. 12 (1) (a); Act of 1938, s. 24 (3), see p. 67.
[36] Act of 1938, s. 25 (2) (b) (ii), see p. 66.
[37] Ss. 38, 40; Third Sched., Part III, para. 1; see pp. 613 *sqq.*
[38] S. 34 (2) (b).
[39] Act of 1940, s. 24 (6), see p. 15.
[40] See p. 180.
[41] S. 211 (1), see p. 415. Sub-ss 1 and 2 are adapted for use in connection with the increase of rate under the No. 2 Act of 1940 by s. 6 (3) and Fifth Sched., see pp. 645, 648.

deduction of tax against the payee;[42] there is no mention here of dividends. Little light, however, is thrown by this connection, save that both enactments are apparently intended to prevent a person escaping liability altogether, or liability at the full rate imposed for the year, merely because he has received a payment taxable at the source before the Finance Act of the year is passed.

Note first, that if the payment in question is an annual, a weekly, or a monthly payment, section 211 (1) has no application, for it applies only to payments made quarterly or half-yearly; and secondly, that if the profits out of which the payments are made are themselves taxable, this sub-section manifestly cannot apply; for if it did, it would tax the same sum twice over, first in the hands of the payer, and again in that of the payee. The assessment is apparently to be made on the payee, and not on the payer

Dividends subject to Dominion Income Tax.—Further, in connection with the relief given in respect of Dominion income tax,[43] it is provided that where income is taxable in the United Kingdom, but Dominion income tax has been paid or is payable in respect of it, the amount of the Dominion tax is to be added in calculating income for purposes of the United Kingdom tax.[44] Where the income in question consists of "dividends" entrusted to any person in the United Kingdom for payment, and the Special Commissioners are satisfied that he is not in a position to ascertain the proper amount of this addition, the amount of the addition shall be charged on the recipient himself under Case VI.[45]

"Dividends" for this purpose includes dividends on preference, as well as ordinary, shares,[46] and also (by definition)[46] any interest, annuities, dividends and shares of annuities payable out of any public revenue, and charged under Schedule C;[47] as well as any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure or concern, and any annuities, pensions, or other annual sums payable out of the funds of any institution in India.[48]

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[42] S. 211 (2). a limitation was read into the wide terms of *this* sub-section in *Hill* v. *Kirshenstein*, see pp. 44, 205; and see p. 262. Sub-s. 2 is extended by s. 12 (2) of the Finance Act, 1930, so as to apply (*inter alia*) to certain preference dividends: any assessment in respect of these may, therefore, be made on the paying company see p. 262. [43] See p. 19.

[44] Finance Act, 1920, s. 27 (4), see p. 500 The No. 2 Act of 1945 does not specifically amend this provision; but see Supplement.

[45] Cf. *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B. 173, p. 20.

[47] See Chap. 5.

[48] Sched. D, Misc. Rules, r. 7, see p. 483. see also Chap. 8, pp. 184, 191.

Rents and Annual Payments in Respect of Land—Under the above heading, the Act of 1940 brings within Case VI of Schedule D rents, mortgage interest, and certain other annual payments connected with land which is chargeable with tax under Schedule A. These provisions have been considered in Chapter 2.[49]

Computation of Profits—An assessment under Case VI may be made either on the actual profits arising in the year of assessment, or upon the profits of a period not greater than one year, averaged out to twelve months, if the Commissioners so direct;[50] that is, the Commissioners who make the assessment or before whom it is brought on appeal. Expenses necessary to earn the receipts may have to be deducted before the profits can be ascertained.[51] Profits and losses may be divided and apportioned or aggregated where necessary for the purpose of applying the rule.[52]

Losses incurred on transactions, which, if profitable, would have afforded ground for assessment under Case VI, may be set off against profits assessed under that Case; the profitable and the losing transactions need not necessarily have any connection, nor need they be of a similar nature; and the losses may be carried forward for the six following years of assessment.[53]

The Income Tax Act, 1945—The tax to be charged on capital sums received for patent rights, and certain "balancing charges" under the Income Tax Act, 1945, are to be charged under Case VI.[54]

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[49] See pp. 48 – 53.

[50] Sched. D, Case VI, r. 2, as amended by Act of 1926, s. 29 (2), see p. 481.

[51] *Curtis Brown, Ltd.* v. *Jarvis* (1929), 14 Tax C. 744. See, *e.g.*, *Forth Conservancy Board* v. *I. R.*, [1931] A. C. 540, p. 236.

[52] Act of 1926, s. 35 (1), see p. 533.

[53] Act of 1927, s. 27, see p. 536. As to the share of partnership profits referred to in sub-s. 2 which would be included in a return of total income, see Chap. 14, p. 301.

[54] Ss. 11, 22, 37, 42, see Chap. 7

CHAPTER 11

INCOME FROM OFFICES, EMPLOYMENTS AND PENSIONS: SCHEDULE E

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Scope of Schedule E—The following classes of profits are chargeable under Schedule E:—

(1) The profits of "all the public offices or employments of profit within the United Kingdom";[1]

(2) The profits of all other offices and employments, the profits of which are payable in the United Kingdom, if the duties are performed in this country,[2] and even though they are not performed here, if the holder of the office or employment is resident in the United Kingdom,[3]

(3) The profits of all offices and employments under any public department whose head office is in the United Kingdom, whether the duties are performed and the profits payable within the United Kingdom or not;[4]

(4) The profits of all pensions payable in the United Kingdom,[5] unless payable out of the funds of any institution in India,[6] or the public revenues of a foreign State;[7] annuities paid out of superannuation funds may be included.[8]

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[1] Sched. E, r. 6, see p. 484. *McMillan* v. *Guest*, [1942] A. C. 561, see p. 241.

[2] Act of 1922, s. 18 (1), see p. 506, see also *Pickles* v. *Foster*, [1913] 1 K. B. 174, as explained in *McMillan* v. *Guest*, above. The question whether profits of an office or employment are chargeable under Sched. E or as those of a foreign possession under Case V depends on the place of payment and not on the place of performance *Bennet* v. *Marshall*, [1938] 1 K. B. 591, see p. 229.

[3] *Foulsham* v. *Pickles*, [1925] A. C. 458, see p. 229, *Eaton Turner* v. *McKenna*, [1937] A. C. 162, see p. 230.

[4] Sched. E, r. 1 (2), see p. 486. *Corry* v. *Robinson*, [1934] 1 K. B. 240, see p. 245.

[5] Act of 1922, s. 18 (1), Act of 1932, s. 17, see p. 218. An annuity granted from a voluntary fund to a retired minister on condition of his resigning his duties was formerly held to be chargeable under Sched. D. *Duncan's Executors* v. *Farmer*, 1909 S. C. 1212, 5 Tax C. 417, and would now be chargeable under Sched. E.

[6] Sched. D, Misc. Rules, r. 7, see p. 191.

[7] Annuities in the nature of pensions paid (as a matter of legal right) out of such funds or revenues appear still to be taxable under the rules of Sched. C, see p. 62. S. 17 of the Act of 1923 (see p. 518) makes pensions and annuities, due to service under the Crown outside Great Britain or Northern Ireland and payable here, chargeable under Sched. E, as well as other emoluments so earned and so payable; see also Act of 1932, s. 17 (2), p. 242, note [17].

[8] See p. 248.

There are specific exemptions for High Commissioners and Agents-General and members of their personal staffs and official agents for British India or any self-governing dominion or colony;[9] as well as for foreign consuls and official agents for foreign States in the United Kingdom.[10]

Office or Employment—As indicated above, the application of Schedule E differs substantially according as the office or employment is "public" or not. Those that are "public" are within the original scope of the Schedule; the remainder were brought into it by the Act of 1922. Rule 6, which purports to show which are public, is quite illogical;[11] but it is now settled that the office of a director of a company, even a private company, which is resident and controlled in the United Kingdom is a public office within the United Kingdom,[12] while the foreign agency of such a company is not;[13] neither is the position of a railway clerk.[14] In spite of the language used in section 18 of the Finance Act, 1922,[15] by which "profits . . . from an office, employment or pension," were, with certain exceptions, transferred from Schedule D to Schedule E, the word "employment" in connection with Schedule E refers to the holding of a post or of a contract *of service* (as in the case of a wage-earner) under an employer, and is not used in the wider sense of a "calling" or "vocation";[16] it includes employment under the Crown, a corporation, a firm and an individual. Even though an office or employment is understood to be gratuitous, or has ceased before any profit accrues, nevertheless, should any profit accrue to the holder by reason of the office or employment, it is chargeable under Schedule E.[17]

The remuneration of a director or managing director who holds such a public office as is described above, is charged under this Schedule irrespective of where the functions are exercised, and although he is not resident in the United Kingdom.[18] A director's office does not cease to be an "office

[9] Finance Act, 1923, s. 19; Act of 1925, s. 26, see pp. 519, 527.
[10] Act of 1930, s. 20, see p. 557.
[11] See p. 484. In *Reade* v. *Brearley* (1933), 17 Tax C. 687, owing to very special circumstances, an office which purported to have a salary attached to it was held not to be an "office of profit."
[12] *McMillan* v. *Guest*, [1942] A. C. 561; *Watson* v. *Rowles* (1926), 11 Tax C. 171. So was the office in *Thyateira (Archbishop)* v. *Hubert* (1942), 168 L. T. 190.
[13] *Pickles* v. *Foster*, [1913] 1 K. B. 174, as explained in *McMillan* v. *Guest*, above; cf. *Foulsham* v. *Pickles*, p. 229, *Eaton-Turner* v. *McKenna*, [1937] A. C. 162, see p. 242.
[14] *Great Western Rail. Co.* v. *Bater*, [1922] 2 A. C. 1. [15] See p. 508.
[16] The word is used in that sense in Sched. D, and there a contract *for services* may be included: *Inwood* v. *Braithwaite*, [1931] 2 K. B. 628; see also *Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276, p. 96.
[17] *Cowan* v. *Seymour*, [1920] 1 K. B. 500 (see p. 243), *per* ATKIN, L.J., at 511, and *per* YOUNGER, L.J., at 518.
[18] *McMillan* v. *Guest* (above) where the *dicta* relating to the place of exercise in *Pickles* v. *Foster* (above), and *Proctor* v. *Ryall* (1928), 14 Tax C. 204, were disapproved. See also *Berry* v. *Farrow*, [1914] 1 K. B. 632; as to profits, and deductions, see pp. 242 *sqq.*

of profit" because he voluntarily ceases to draw any remuneration.[19]

The tax cannot be paid for a director by a company which has no specific power to pay it.[20]

On the other hand, a person employed by a British company who is not a director, and therefore does not hold a "public office," is taxable under Schedule E, although his duties are performed wholly outside the United Kingdom, if (and only if) he is resident here and his remuneration is substantially paid in this country.[21] The remuneration of a college bursar,[22] of a director of a benevolent fund incorporated by Act of Parliament,[23] of the chaplain of a charitable school,[24] and of the master and mistress of a national school,[25] are also charged under this Schedule; but the share of the collegiate income which is paid to a member of a college as such is not so chargeable.[26]

Voluntary Pensions—A pension or an annual payment in the nature of a pension which is paid, where a person has ceased to hold an office or employment, by the person under whom he held the office or by whom he was employed is now chargeable under Schedule E (if the payer is in the United Kingdom), although the pension, etc., is paid voluntarily or is capable of being discontinued.[27] This applies not only if the pension or annual payment is paid to the former holder of the office or employment, but also if it is paid to his widow or child, or to any dependant or relative of his.

The Profits Assessable—Speaking generally,[28] the tax is assessed upon "all salaries, fees, wages, perquisites or profits or gains whatsoever, arising from an office or employment," or upon "the amount of any annuity, pension or stipend,"[29] subject to certain deductions.

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[19] *Henry* v. *Galloway* (1933), 49 T. L. R. 191. *Oliver* v. *Chuter* (1934), 18 Tax C. 570.

[20] *Boschoek Proprietary Co., Ltd.* v. *Fuke*, [1906] 1 Ch. 148, 162, see, however, *Hartland* v. *Diggines*, p. 243, note [88].

[21] *Eaton-Turner* v. *McKenna*, above, see also *Fouldham* v. *Pickles*, [1925] A. C. 458, p. 229.

[22] *Langston* v. *Glasson*, [1891] 1 Q. B. 567.

[23] *Dingley* v. *MacNally* (1937), 21 Tax C. 152.

[24] Even though a local act directs the salary to be paid without deduction for taxes *In re School for Indigent Blind*, [1898] 2 Ch. 669.

[25] *Bowers* v. *Harding*, [1891] 1 Q. B. 560, see p. 250

[26] *Langston* v. *Glasson*, above; *not* as it brought within the scope of the Schedule by s. 18 of the Act of 1922. As to exemptions and allowances for colleges, etc., see Chap. 13.

[27] Act of 1932, s. 17, see p. 566; *Kemp* v. *Evans* (1935), 20 Tax C. 14. All these payments are "earned income": s. 17 (3), see p. 12. If the payment is made by or on behalf of a person outside the United Kingdom, the charge is under Sched. D, Case V. r. 2 (see p. 230, note [99]), except, apparently, where the pension or annuity in question is paid out of Dominion revenues, in which case it is under Sched. E: Act of 1932, s. 17 (2), read with Act of 1923, s. 17, see p. 518.

[28] Income from certain sources remains unaffected by the amendments in s. 45 of the Act of 1927, sub-s. 1, proviso, see p. 547. These are dealt with p. 255.

[29] The statement of the text is an attempt to give the effect of r. 1 (see p. 451), as read with Act of 1927, s. 45 (1), (10): see pp. 546, 548. The gross receipts are described

Any duties or other sums payable or chargeable on the profits by Act of Parliament are to be deducted, where actually borne by the party taxed.[30] If the employer pays the emoluments "free of income tax," discharging the tax himself, the amount of the tax must be added to what the employee has received in order to ascertain the true amount of his assessable profits,[31] even though the employer is not compelled by any contract to make the payments free of tax.[32]

Allowance is made for all official deductions and payments made on receipt of the profits,[33] as well as for travelling and other expenses wholly and necessarily incurred in performing the duties of the office.[34] No deduction is allowed on this account for the travelling expenses of persons who reside at a distance from the scene of their duties.[34] Expenses incurred in recovering the emoluments cannot be deducted.[35]

The profits assessable include voluntary gifts, provided they are received in virtue of the office; the fundamental question with regard to this matter is whether the sum dealt with has accrued as a profit by reason of an office; and if a gift is a mere gratuity or testimonial given of free will to the holder of an office on or after his ceasing to hold the office, the sum so received is not taxable.[36]

"A payment may be liable to income tax although it is voluntary on the part of the persons who made it, and the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office. . . . And the liability to income tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it."[37]

"The question is not what was the motive of the payment

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as "emoluments" in sub-s. 10, and "deductions from emoluments" are referred to in sub-s. 2. The Offices and Employments Acts, 1943 and 1944, see p. 250 *sqq.*, use the word "emoluments."

[30] R. 1; these words have been held not to apply to voluntary or compulsory contributions made to a thrift fund set up by Act of Parliament: *Hudson* v. *Gribble*; *Bell* v *Gribble*, [1903] 1 K. B. 517; and it is difficult to see what effect they have. See note [82] on p. 248.

[31] *North British Ry.* v. *Scott*, [1923] A. C. 37; cf. *Samuel* v. *I. R.*, p. 302. Only the reduced amount payable in accordance with s. 26 of the Act of 1941 has now to added, see p. 256; sub-s. 4 provides for adjustment at the outset.

[32] *Hartland* v. *Diggines*, [1926] A. C. 289.

[33] R. 8. This does not apply to deductions made to recoup a debt that is owing: *Magraw* v. *Lewis* (1933), 18 Tax C. 222.

[34] Rr. 9, 10; *Cook* v. *Knott* (1887), 2 Tax C. 246; *Revell* v. *Elsworthy* (1890), 3 Tax C. 12, see p. 250; *Ricketts* v. *Colquhoun*, [1926] A. C. 1, *ibid.*, see cases under "Ecclesiastical Offices," p. 246. But as to war circumstances, see p. 249.

[35] *Eagles* v. *Levy* (1934), 19 Tax C. 23.

[36] *Cowan* v. *Seymour*, [1920] 1 K. B. 500, *per* YOUNGER, L.J., at 518, see p. 244. In *Denny* v. *Reed* (1933), 18 Tax C. 254, the gifts were taxable.

[37] *Herbert* v. *McQuade*, [1902] 2 K. B. 631, *per* COLLINS, M.R., at 649, see p. 246.

but what was the character in which the recipient received it? Was it received by him by reason of his office?"[38]

Accordingly, the profits of an office or employment include, upon the one hand, gifts made to an incumbent, or to a curate, by virtue of his office;[39] or to a bank employé on completing twenty-five years of service; as well as endowment policy premiums paid by the employer.[40] On the other hand, they do not include a gratuity paid to the liquidator of a company, after his employment has come to an end, as a personal testimonial for the services rendered while it was in existence;[41] a sum received by a professional cricketer out of the proceeds of a benefit match to which he has no legal right under the terms of his employment;[42] nor a sum agreed to be paid by a company to a retiring chairman in consideration of his renouncing his right to receive compensation when he should cease to be a director of the company,[43] or to a director who consents to the cancellation of an agreement that he shall manage a subsidiary company's works;[44] nor damages paid for repudiation of a service agreement.[45] Nor do the profits include a lump sum paid as the consideration for a separate covenant not to engage in a competing business when the employment shall have ceased.[46] On the other hand, a sum paid to a director of a company in consideration of his not resigning that office forms part of its profits,[47] and so does a sum paid to a managing director in consideration of his agreeing to serve at a reduced salary; but if for the same consideration he renounces his pension rights, it must be apportioned and the latter part excluded from the profits.[48] A payment made to a professional footballer on his transfer to another club, in lieu of a benefit which he might have had of right or as a gift, and the proceeds of a benefit, have been held to be profits of his employment.[49] A commission paid to the secretary and director of a company in liquidation for negotiating the sale of a part of the company's

[38] *Cooper* v. *Blakiston*, [1907] 2 K. B. 688, *per* BUCKLEY, L.J., at 703, see p. 246; this rule was applied in *Hartland* v. *Diggines*, see p. 243, note [32], *Mudd* v. *Collins*, see note [50]. In *Cowan* v. *Seymour* (above), however, the motive of the payment was not altogether disregarded. See also p. 246, note [63].

[39] *Blakiston* v *Cooper*, [1909] A. C. 104, see p. 246; *Slaney* v *Starkey*, *ibid.*

[40] *Western* v *Hearn* (1943), 25 Tax C. 425; *Richardson* v. *Lyon*, *ibid.* 497.

[41] *Cowan* v *Seymour*, [1920] 1 K. B. 500, above.

[42] *Seymour* v *Reed*, [1927] A. C. 554.

[43] *Drechsel* v *Hunter* (1932), 16 Tax C. 637 (H. L.). "Compensation" paid to two other directors of the same company on retirement was, however, held to form part of the profits of their office: *Henry* v. *Foster* (1931), 16 Tax C. 605 (C. A.)

[44] *Duff* v. *Barlow* (1941), 22 Tax C. 633.

[45] *Du Cros* v. *Ryall* (1935), 19 Tax C. 444.

[46] *Beak* v. *Robson*, [1943] A. C. 252. Contrast *Thompson* v. *Magnesium Electron, Ltd.*, p. 109 [47] *Cameron* v. *Prendergast*, [1940] A. C. 549.

[48] *Tilley* v. *Wales*, [1943] A. C. 386, follid. *Wilson* v. *Daniels*, [1943] 2 All E. R. 732. *Lapland* v. *Boarland*, [1946] 1 All E. R. 13.

[49] *Davis* v. *Harrison* (1927), 137 L. T. 324; *Corbett* v. *Duff*, [1941] 1 K. B. 730; but see *Seymour* v. *Reed*, above.

business was held to be part of the profits of his office, though the services for which it was paid were not part of the duties of the office.[50] Sums paid to the chairman of a company for visiting China,[51] and other sums paid to a chairman or directors in addition to their ordinary remuneration,[52] are included in the profits of their offices. So is the excess of market value over par value of shares allotted at par to a director or other official of a company in respect of his services.[53]

A yearly allowance made by a city corporation to a police officer to provide suitable clothing for himself forms part of the profits of his office for the purpose of Schedule E.[54]

If a person holding an office or employment has an official residence in which he resides under such conditions that he is the " occupier "[55] for the purposes of Schedule A, he is assessable under that schedule. Payments by a company for the upkeep of a dwelling-house " occupied " by a director are included in his profits for purposes of Schedule E.[56] If, on the other hand, such a person is not the occupier, as where a bank manager resides rent-free in a portion of the bank's premises, and is bound to reside there as part of his duty, the annual value of the residence is not included in the profits for which he is assessed under Schedule E.[57]

Any allowance to a person in the service of the Crown which is certified by the Treasury to represent compensation for the extra cost of living outside the United Kingdom is not to be regarded as income.[58] " Post-war credits " payable to members of H.M. Forces and of certain other services, as such, are not to be so regarded: nor are war gratuities.[59]

A mere book credit of a sum of money which may become the property of the person employed on the happening of a certain contingency, but may never be his at all, is not enough to include that sum in his taxable profits.[60] But if such sums are annually credited to an employee, subject to a possibility

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[50] *Mudd* v. *Collins* (1925), 9 Tax C. 297, *Shipway* v. *Skidmore* (1932), 16 Tax C. 748.
[51] *Barson* v. *Airey* (1925), 41 T. L. R. 560. Cf. *May* v. *Falk* (1932), 17 Tax C. 218.
[52] *Dauncey* v. *Howlett* (1926), 10 Tax C. 454. *Radcliffe* v *Holt* (1927), 11 Tax C. 621.
[53] *Salmon* v *Wright* (1935), 51 T. L. R. 333, *Ede* v. *Wilson*, [1945] 1 All E. R. 367. See *Lowry* v. *Consold. African Trust, Ltd.*, p 112. Also *Parkins* v. *Warwick* (1943), 25 Tax C. 419.
[54] *Fergusson* v. *Noble*, 1919 S. C. 534; 7 Tax C. 176.
[55] See Chap. 2, p. 38
[56] *Nicoll* v. *Austin* (1935), 19 Tax C. 531
[57] *Tennant* v. *Smith*, [1892] A. C. 150 (which arose with regard to exemption from tax), as interpreted in *I. R.* v. *Miller*, [1930] A. C. 222, see p. 38, and see p. 299; *Corry* v. *Robinson*, [1934] 1 K. B. 240, where the annual value of an official residence was excluded: *Reed* v *Cattermole*, see p 247.
[58] Act of 1943, s. 18, see p. 677; this supersedes a decision to the contrary effect in *Corry* v. *Robinson*, above.
[59] Act of 1943, s. 19, see p. 677; No. 2 Act of 1945, s. 23, p. 781.
[60] *Walker* v. *Reith* (1906), 8 F. 381; in that case sums were credited to the chief employees in a business, but were not to become their property until they should buy out the business.

of forfeiture, and at the termination of his employment investments representing those credits are transferred to him, the market value of those investments forms part of his emoluments in the year of the transfer.[61]

Profits of Ecclesiastical Offices—A series of decisions has been given with regard to the taxation under Schedule E of the holders of offices or employments under ecclesiastical bodies.[62] A voluntary gift made annually at Christmas to a minister of the Church of Scotland is to be included in the profits assessable;[63] so is the Easter Offering which it is customary in the Church of England to make to the incumbent of a benefice,[64] and a Whitsuntide Offering made to an assistant stipendiary curate.[65] The profits of a beneficed clergyman of the Church of England include also a grant made annually to him in order to supplement the inadequate income of his benefice, out of a fund raised voluntarily for the augmentation of such incomes;[66] the same conclusion was reached with regard to the stipend of a minister of another denomination, which had been similarly augmented; it made no difference that the trustees of the fund had regard to the pecuniary position of the ministers.[67] On the other hand, a grant made out of a curate's augmentation fund to a clergyman of the Church of England, not as being curate of a parish but for having worked during many years without reproach, was held not to arise from or by reason of an office or employment, and not to be taxable under Schedule E.[68]

A clergyman or minister of any religious denomination may deduct (under Schedule E or any other schedule) from his profits "any sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman or minister."[69] A payment made to an assistant minister for the performance of the minister's duty does not give rise to such a deduction,[70] nor do the expenses of

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[61] *Edwards* v. *Roberts* (1935), 19 Tax C. 618. [62] Sched. E, r. 6 (g), see p. 484.

[63] *J. R.* v. *Strong* (1878), 15 S. L. R. 704, 1 Tax C. 207. So were the gifts in *Thyatira (Archbishop)* v. *Hubert* (1942), 168 L. T. 190. For a statement of principle, see p. 243, above.

[64] *Blakiston* v. *Cooper*, [1907] 2 K. B. 686; [1909] A. C. 104. Lord ALVERSTONE, C.J., [1907] 2 K. B. at 696, 699, throws doubt upon the decision in *Turton* v. *Cooper* (1905), 92 L. T. 863, 5 Tax C. 138, that an Easter offering was not taxable where it was actuated by the poverty of the recipient.

[65] *Slaney* v. *Starkey*, [1931] 2 K. B. 148.

[66] *Herbert* v. *McQuade*, [1902] 2 K. B. 631, see the observations on this case and on *Blakiston* v. *Cooper* (above) in *Seymour* v. *Reed*, [1927] A. C. 565—570.

[67] *Poynting* v. *Faulkner* (1905), 5 Tax C. 145. This view seems to dispose of the decision in *Turton* v. *Cooper*, above.

[68] *Turner* v. *Cuxon* (1885), 22 Q. B. D. 150, the authority of this case does not appear to be shaken by the later decisions cited in the text: see per Lord ALVERSTONE, C.J., in *Blakiston* v. *Cooper*, *loc. cit.*

[69] General Rules, r. 2 (1) (a); Sched. E, rr. 9 and 10, see pp. 487, 488; and cf. Sched. D, Cases I and II, r. 3 (a), p. 473.

[70] *Latham* v. *Macrae* (1894), 12 R. 326; 2 Tax C. 65; *Jardine* v. *Gillespie*, 1907 S. C. 77; 5 Tax C. 263.

claiming an augmentation of stipend;[71] nor do expenses incurred in travelling from one curacy to another.[72] Deduction may, however, be made for communion expenses, expenses incurred in visiting the congregation and attending meetings, and in buying stationery;[73] and for the cost of opposing a Bill to acquire the parsonage house.[74]

The annual value of a house necessarily occupied by a clergyman for the discharge of his duties does not form part of his profits taxable under Schedule E;[75] nor do sums paid by a church committee for Schedule A tax, local rates or water rate in respect of the house, if he is not in law the "occupier," that is, if his position resembles that of a servant, who is bound to live in the house provided by his employer.[76] But if he is not so bound, and is therefore the "occupier," he is taxable in respect of the annual value under Schedule A;[77] and in respect of any payments made on his behalf, under Schedule E.[78]

A clergyman or minister who uses part of his dwelling-house for the performance of his duties may deduct from his profits ⅛th of the rent (if he pays rent) or ⅛th of the annual value (if the house is rent-free);[79] but only if he is the occupier.[80]

Contributions to Superannuation Funds, etc.—As has been seen in Chapter 1, certain relief is given as regards income tax charged under any Schedule, for sums paid by any person in fulfilment of a liability imposed by any Act of Parliament, or by the terms and conditions of his employment, for the purpose of securing a deferred annuity to his widow, or provision for his children after his death.[81] This relief applies primarily, if not entirely, to employed persons: it is, however, subject to certain restrictions as to amount,[81] and fails to deal with any provision made by such a person for securing an annuity for himself or a gratuity to his widow.

The omission has been met, to a great extent at any rate, by allowing deductions in computing the actual amount of assessment under Schedule E, in respect of (1) any sum paid

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[71] *Jardine* v. *Gillespie*, *ubi sup.*

[72] *Freeson* v. *Glyn-Thomas*, [1922] W. N. 251; 8 Tax C. 302.

[73] *Charlton* v. *I. R.* (1890), 17 R. 785, *Jardine* v. *Gillespie*, *ubi sup.*

[74] *Mitchell* v. *Child*, [1942] 2 All E. R. 504.

[75] Cf. *Tennant* v. *Smith*, [1892] A. C. 150, see p. 245. A priest's share of communal maintenance in a presbytery-house was not included: *Daly* v. *I. R.*, 1934 S. C. 444; 18 Tax C. 641.

[76] *Reed* v. *Cattermole*, [1937] 1 K. B. 613 (C. A.), followed in *I. R.* v. *Leckie*, 1940 S. C. 343; contrast, *I. R.* v. *Miller*, below.

[77] See *Corke* v. *Fry* (1895), 22 R. 422; 3 Tax C. 335, see p. 300; the decision (though not the reasoning) in which case was approved in *I. R.* v. *Miller*, [1930] A. C. 222. If the clergyman is not so taxable, he may claim a certain addition to his "earned income" deduction: Finance Act, 1919, s. 22, see p. 404; and see p. 13.

[78] General Rules, r. 2 (1) (b), as amended by Act of 1944 s. 22, see p. 487.

[79] *I. R.* v. *Leckie*, above.

[80] Income Tax Act, 1918, s. 32, as amended by Finance Act, 1920, s. 26 (1), see p. 410.

[81] See p. 17.

by an employed person towards a superannuation fund,[83] and of (2) any sum paid by an individual holding an office or employment towards providing a superannuation allowance or gratuity on retirement or death, under the compulsion of a public general Act of Parliament.[83] These two provisions appear to cover much the same ground, except that a "superannuation fund" must be approved by the Commissioners of Inland Revenue, and in order to qualify for that approval, must comply with certain conditions;[84] whereas, if the contribution be payable under a general Act, no such approval is required. Further, while payment to secure a gratuity on death is expressly provided for in the case of a public general Act, this is not so in the case of a superannuation fund; but in the latter case, if the fund provides for payment of a gratuity, and if its main purpose is to provide annuities on retirement or incapacity, it is in the Commissioners' discretion whether or not they shall approve the fund.[85]

In the case of a "superannuation fund," the contribution is to be deducted from the emoluments of the year for which the sum is paid, as an expense incurred in that year,[86] and it must be an "ordinary annual contribution,"[87] a phrase which excludes an entrance fee or donation, paid once for all. Where the contribution is paid under a general Act, the sums contributed under compulsion of the Act "for any year" may be deducted from the amount of emoluments on which the payer is to be assessed for that year.[88] In neither case is there any restriction as to the amount of the deduction.

Payments out of Superannuation Funds, etc.—An annuity paid out of a superannuation fund would ordinarily be taxed by deduction under General Rule 21, like other annuities which are not wholly payable out of taxable profits, and the trustees or managers of the fund would have to account for the tax deducted.[89] Alternatively, the Commissioners of Inland Revenue may direct that the annuitant himself shall be assessed under

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[83] Finance Act, 1921, s. 32, see p. 506. the decisions against deductions for contributions to provident funds set up by the employer are now practically obsolete, viz.: *Hudson v. Gribble*; *Bell v. Gribble*, [1903] 1 K. B. 517; *Smyth v. Stretton* (1904), 5 Tax C. 36; *Bruce v. Hatton*, [1922] 2 K. B. 206. See also note [39] on p. 243.

[83] Finance Act, 1922, s. 31, see p. 514, see, *e.g.*, the Local Government and Other Officers Superannuation Act, 1922 (12 & 13 Geo. 5, c. 59).

[84] Some of these conditions may be waived, and others substituted for them, by the Commissioners, this subject is more fully considered p. 291.

[85] Act of 1921, s. 32 (1), as amended by Act of 1927, s. 45 (2) and s. 47 (1), see pp. 547—548.

[86] Act of 1921, s. 32 (3) (a), proviso (ii), see p. 507.

[87] Act of 1921, s. 32 (1), and proviso (a), see p. 507; Regulations made under s. 32, reg. 5, see p. 745. By proviso (b), the deduction is confined to payments which are outside the scope of s. 32 of the Act of 1918, see p. 16.

[88] Act of 1922, s. 31, see p. 514.

[89] See pp. 196—198. This is still the case where the payee resides out of the United Kingdom, except where his employment was carried on abroad: Regulations made under s. 32 of the Act of 1921, reg. 9, see p. 745.

Schedule E;[90] and the tax be deducted as is the case with other pensions.[91]

Where contributions to a superannuation fund (with or without interest thereon) are repaid to a contributor, and where a lump sum is paid in commutation, or in lieu, of an annuity, income tax is to be paid thereon by the trustees of the fund at one-fourth of the standard rate in force in the year in which the payment or repayment is made; this does not apply where the employment was carried on abroad.[92] There is no provision which enables the trustees to deduct this tax against the payee, unless by contract or under the rules of the fund.

On the other hand, where contributions made under a public general Act of Parliament are to be repaid under the authority of the Act, the person who makes the repayment is to deduct the whole amount of the tax that would have been paid on the contributions if they had not been allowed as deductions, as well as the tax on the interest, if any: he is to account to the Crown for the tax so deducted.[93]

Other Deductions for Expenses.—Apart from the matters last dealt with and from the expenses of ecclesiastical offices,[94] the following points have been decided with regard to deductions in arriving at assessments under Schedule E: A managing director of a limited company which has taken over his business cannot deduct against his salary his average loss on the business before it was taken over.[95] nor can a managing director, who has agreed to pay for new shares out of his commission on business done, deduct the amount so paid.[96] As already stated, travelling and other expenses necessarily incurred in performing the duties of an office or employment are deductible;[97] but not those of getting to the place where they are performed,[98] except where the place of work or residence has changed through war circumstances and the expenses have therefore increased.[99] Thus, the expenses of a justices' clerk incurred in travelling from his residence to the Court[1] are not deductible; nor those of a Recorder who practises as a barrister in London, incurred in

[90] Act of 1921, s. 32 (2), as amended by Offices and Employments Act, 1944, s. 2 (1), see p. 506, the direction must apparently be specific in each particular case. Where such an annuity is payable free of tax, s. 25 of the Act of 1941 (see p. 659) continues to apply, and not s. 26, Act of 1944, s. 2 (1), proviso, p. 693.

[91] See p. 220.

[92] Regulations made under s. 32 of the Act of 1921, reg. 8, see p. 745; as to the effect of "debt due to the Crown," see p. 404.

[93] Act of 1922, s. 31 (1), proviso, see p. 514; General Rules, r. 21 (2), see p. 491.

[94] See p. 246.

[95] *Bray* v. *Brothers* (1897), 3 Tax C. 560, if the circumstances are such as to bring him within s. 29 of the Act of 1927 (see p. 537), he may get relief in another way.

[96] *Parker* v. *Chapman* (1928), 138 L. T. 729.

[97] Sched. E, r. 9, see p. 243.

[98] See, *e.g.*, *Andrews* v. *Astley* (1924), 8 Tax C. 589.

[99] Act of 1942, s. 36, see p. 665; the deduction is limited to £10.

[1] *Cook* v. *Knott* (1887), 2 Tax C. 246; see also p. 247, note [73].

travelling to hold his quarter sessions;[2] nor those incurred by directors of a company in coming from home to attend their meetings;[3] nor those of an air pilot in reaching the aerodrome from his residence.[4] The wages of a domestic servant are not deductible from the salary of a school teacher.[5] A county medical officer has been held not entitled to deduct subscriptions to medical and other professional societies, which were necessary for him to keep acquainted with the developments of sanitary science;[6] the decision seems doubtful. There is no deduction for employment agency fees.[6a]

The allowances for machinery and plant to be granted under the Income Tax Act, 1945, will apply in relation to employments and offices.[6b]

Assessment and Collection Generally: "Pay as you Earn"— Apart from those connected with the Armed Forces, which will be separately dealt with, all emoluments assessable under Schedule E are now assessed, and the tax collected, under the "Pay as you earn" system. This system is brought in by the Income Tax (Employments) Act, 1943, and (Offices and Employments) Act, 1944, and the Regulations made thereunder,[7] for 1944—45 and onwards.

The charge is on the amount of the emoluments for the actual year of assessment.[8] The tax is deducted, so far as practicable, from time to time as the emoluments are earned and paid. But different employees, though perhaps remunerated at the same rates, may be entitled to different reliefs,[9] and to different deductions for expenses.[10] Moreover, the same employees may not earn the same rate of remuneration throughout the year, and may even in some part of the year be earning nothing. These difficulties are met by—

(i) postponing the making of assessments by the Revenue authorities;[11]

(ii) allowing deductions of tax to be made without waiting for the assessment, and possibly repayments also, by the "employer," that is, the person who pays the wages, salary or pension on his own account or on

[2] *Richards* v. *Colquhoun*, [1926] A. C. 1.
[3] *Revell* v. *Elsworthy* (1890), 3 Tax C. 12, following *Cook* v. *Knott*, above.
[4] *Nolder* v. *Walters* (1930), 46 T. L. R. 297.
[5] *Bowers* v. *Harding*, [1891] 1 Q. B. 560.
[6] *Simpson* v. *Tate*, [1925] 2 K. B. 214; followed, *Blackwell* v. *Mills*, [1946] 2 All E. R. 655.
[6a] *Shortt* v. *McIlgorm*, [1945] 1 All E. R. 291.
[6b] See Chap. 7, p. 165.
[7] Set out on pp. 680, 751 *sqq.*
[8] Employments 1943, s. 1, see p. 680. To prevent double taxation, provision was made in s. 3 and in ss. 4, 7, 8 of the Act of 1944 for the discharge of a part of the tax for the year 1943—44, as to earlier years, see s. 6.
[9] See Chap. 1.
[10] See p. 249.
[11] Employments Acts, 1943, s. 1 (1), p. 680, regs. 42 *sqq.*, pp. 767—771.

behalf of another;[12] subject, of course, to adjustment later;

(iii) supplying him with a tax deduction card, on which a "code" is specified, for each employee,[13] as well as with tax tables.[14]

A "code" is a number indicating approximately, that is, within £5 for the lower amounts and £10 for the higher, what is the rate of reliefs and deductions for expenses to which the individual employee is entitled over and above the earned income relief and the reduced rate of tax on the first £165 of income;[15] these are not included in the code because they vary automatically with the income, but they are allowed for in the tax tables.

In determining the appropriate code, reductions may be made for any income of the individual, other than that derived from the employment, on which he would be entitled to relief; and for any rent, interest, etc. from which he is entitled to deduct tax: or for any tax remaining unpaid from a previous year. There may be certain other adjustments, as for excessive earned income allowance where the wife is working, as where the employee has more than one employment, or for tax overpaid in a previous year. It may also be found impracticable to allow in the code for all the employee's deductible expenses;[16] and again in certain exceptional cases the inspector may determine that tax shall be deducted at the standard rate, or not be deducted.[16a]

An employee may object and appeal against his code, if aggrieved by it; on a change of circumstances, the inspector may amend it.[17]

But, as the code only affords an approximate rate of deduction when the assessment comes to be made, and, it may be, objected and appealed against, any tax overpaid or underpaid may have to be adjusted.[18]

Provision is made for the case of an intermediate employer.[19]

Deduction and Repayment by Employer—Part III of the Regulations indicates how these are to be carried out: an attempt to reproduce it in summary would not be useful. Reg. 15 deals with the most usual cases: if, on any pay-day, more tax is payable to date than has been previously deducted, the excess is to be deducted: if too much has been previously deducted, the difference is to be repaid. A modified method of deduction may be authorised by the inspector of taxes with

[12] S. 1 (1); regs. 2 (1), 15 *sqq.*, pp. 751, 754.
[13] S. 2 (1) (a), (2).
[14] Reg. 8 (1), (2), p. 752
[15] Regs. 12, 13.
[16] Reg. 3.
[16a] Regs. 7 *sqq.*
[17] See p. 11
[18] Reg. 9; see reg. 15 (7).
[19] Regs. 42, 46.

regard to wages paid weekly or at shorter intervals, if the employees concerned generally concur.[20]

Reg. 16 deals with emoluments paid at regular intervals other than weeks or months, and treats them as if, say, a quarterly payment were made on July 5, October 5, and so on; reg. 17 with overtime, etc., paid separately where the "main emoluments" are paid monthly or at longer intervals; reg. 18 with other special cases; and reg. 21 (with 23) allows the inspector to direct a simpler method where a fixed salary or wage is received.

Reg. 19 obliges an employer to supply a certificate to the inspector and two copies of it to the employee, where the latter leaves his employment: and directs the employee and the new employer what to do thereafter. This regulation does not apply to retirement on a pension paid by the same employer. The death of an employee is dealt with in reg. 19A.

Reg. 25 authorises repayment of tax by the employer during absence from work owing to sickness or other similar cause, and by the Revenue authorities during unemployment. It also deals with absence for other causes. Where the employer pays the employee's tax, the emoluments are to be "grossed" for the purposes of deduction and repayment.[21]

After the end of the year, that is, after April 5, the employer is to give the employee a certificate of the total amount of emoluments paid and tax deducted, and of the appropriate code, if he is in the employment (including receipt of pension) on that date, and if tax has been deducted in the year.[22]

Reg. 20 gives various instructions to an employer who has not received from the inspector a tax deduction card for a particular employee paid at more than £2 a week. He is to make a return (para. (1)), what he is to do with regard to deduction may appear when "the prescribed card" mentioned in para. (2) is seen: it is not made clear in the Regulations.

From the presence of reg. 20 it may be gathered that in the majority of cases the employer will have received a tax deduction card from the inspector before he pays his employee; and from the fact that it does not apply where the duties are wholly performed, or where the employee "is," and his emoluments are paid, outside the United Kingdom; or where he is a pensioner and resides outside the United Kingdom, it is clear that the remaining regulations are applicable in all those cases.

But as to seamen (not being members of the armed forces

[20] Reg. 22, p. 759 [21] Reg. 24. [22] Reg. 26.

or in the employment of a railway company) special provisions are made in Part V of the Regulations.

Assessments : Appeal—Though deductions, etc., have been made in the meantime, the amount of the liability is not definitively ascertained until an assessment is made by the inspector of taxes, who has all the powers for that purpose of an assessor on the one hand, and of any commissioners on the other; railway employees are assessed directly by him. The assessment may be made anywhere in the United Kingdom: and a single assessment may include all the emoluments of the employee.[23]

The inspector is to serve a notice of assessment on every employee by whom tax is payable or from whose emoluments any tax was deducted, and not repaid, during the year.[24]

No time is limited for any of these proceedings, but it appears they cannot be taken until after the year of assessment has ended, on April 5. If the tax payable under the assessment is less than the total tax deducted, and not repaid during the year, the employee may require the inspector to repay the difference: if it is more than that total, the inspector may require the employee to pay the excess (within fourteen days of demand).[25] Otherwise, the matter will be taken into account in fixing the "code" for a subsequent year. There is to be an adjustment for any previous year's tax overpaid or underpaid or under-deducted.[26]

An employee who is aggrieved by his assessment may give notice of objection to the inspector within twenty-one days of the date of the notice of assessment. If the inspector does not amend it with his agreement, the employee may, by giving notice to the inspector, appeal to the General Commissioners for the division where the assessment was made or to the Special Commissioners.[27]

For cases of casual employment, and for any other class of cases in which the Commissioners of Inland Revenue consider the general system of deduction impracticable, alternative methods of assessment and collection are provided by Regs. 47 and 47A.[28]

Payment of Tax by Employer—Speaking generally, the employer is to pay to the collector within fourteen days of the 5th of each month, the amounts which he was liable to deduct on and from the 6th of the previous month, *less* what he was

[23] Reg. 42, p. 767, subject to the changes made by regs. 42—48, the enactments as to assessment under Sched. E summarised on pp. 368—370, appear still to be in force.
[24] Reg. 44. [25] Reg. 48 (2).
[26] Reg. 46, see also reg. 48.
[27] Reg. 45; as to determination of appeals, see pp. 382—384; and as to case stated, see pp. 385—389. [28] See pp. 769—771.

liable to repay in that period. But where the employee receives a fixed salary or wage, and reg. 21 has been applied, the employer is to make his payments for every three months (beginning April 6 and so on) not later than July 19, October 19, and so on.[29]

If no amount has been paid within those fourteen days, the collector may call for a return which will enable him to certify the amount payable.[30] In any event the employer is to make a return to the collector within fourteen days after April 5, with regard to each employee, of the total paid, the code, and the total tax deducted and not repaid, together with a statement and a certificate; and he may be called upon to show wage sheets, etc.[31] Further, the inspector may require from the employer a return showing any emoluments not paid until after the end of the year.[32] Penalties are laid down for failure to comply with any of these requirements.[33]

Recovery of any tax required to be paid by reg. 27 may be obtained by any of the proceedings described in Chapter 18, except, of course, distress on lands: the limit of amount for summary proceedings is raised to £100, the limit of time to twelve months.[34] The priorities in bankruptcy, insolvency, and winding-up, etc., which apply to income tax in general are applied here to so much as is unpaid of the employer's liability for the period of twelve months before the relevant date.[35] Where there is an intermediate employer, the "principal employer" is responsible.[36]

The Armed Forces—As regards pay, pensions and other emoluments payable in respect of service in or with the armed forces of the Crown, the earlier system of assessment and collection is still in force.[37]

Computation : Assessment, etc.- In general, both receipts and deductions are to be computed according to the facts of the preceding year.[38] But in the year of assessment (commencing April 6) in which an office or employment, or an annuity, pension or stipend commences, the tax is computed on the actual receipts and deductions of that year itself; and where it commenced in the course of the preceding year (and not on April 6 in that year), the tax is also to be computed according to the facts of the year of assessment and not of the preceding year; where it commenced on April 6 in the preceding year,

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[29] Reg. 27, see mitigations in paras. (3), (4)
[30] Reg. 28, p. 761.
[31] Regs. 30, 32
[32] Reg. 43.
[33] Employments Act 1943, s. 2 (3).
[34] Reg. 29 (1).
[35] Reg. 31; see pp. 402-403 As to death or change of employer, see regs. 33, 34.
[36] Reg. 3, p. 680
[37] Employments Act, 1943, s. 1 (2), see p. 680. War gratuities are exempt, see p. 16.
[38] Act of 1927, s. 45 (1), (2), see p. 546.

or had commenced in the year before that—that is to say, where it has been enjoyed for a whole year, or for a year and a broken period, before the year of assessment—the person chargeable may have the amount of his assessment reduced to the net profits of the year of assessment, on giving notice within twelve months after the end of that year.[39] For the year of assessment in which an office, employment or pension, etc., ceases to be held, the tax is to be computed on the net profits of that year itself to the date of cessation; and the assessment of the preceding year may also be increased so as to bring it up to the amount of the net profits of that year.[40]

The above provisions do not apply to the following sources of income:[41]—Any emoluments, pension or annuity payable in Great Britain or Northern Ireland (but not out of their revenues) in respect of service elsewhere rendered to the Crown—this includes leave pay, pensions, widows' pensions, and so on—where the recipient is resident in the United Kingdom;[42] and emoluments of any office or employment exercised occasionally or intermittently in the United Kingdom by a person who is not continuously resident there.[43] Such income remains assessable according to the net profits for the year of assessment itself;[44] but provision is made for adjustment if the actual profits for the year of assessment prove to be greater, or less, than those on which the assessment has been made; in the latter case, the tax overpaid is to be refunded.[45]

Any war bonus or other temporary increase or addition granted to meet the rise in the cost of living is brought into the assessment according to the provisions applicable to the remainder of the income from the office or pension, etc.[46]

The tax is assessed by separate commissioners and is deducted by the public office or department concerned, or by a Crown receiver or paymaster or any agent who pays the salary, etc., for the Crown;[47] this applies also to emoluments, pensions and

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[39] Sub-s. (4) (i), (ii), (iii), see p. 515; where notice is given under sub-para. (iii) any overpayment will be refunded. Cf the provisions in Case III, r. 2 (1), and those relating to Cases IV and V in s. 29 (1), proviso (b), of the Act of 1926: see pp. 181, 223. The question whether a new office or employment has commenced is a question of fact *May* v. *Falk* (1932), 17 Tax C. 218.

[40] Act of 1927, s. 45 (5), see p. 547. The necessary additional assessments may be made; and as to the year in which the office, etc. ceased, a repayment may be obtained of tax overpaid; as to the preceding year, if the actual profits did not come up to the amount of the assessment, the taxpayer has no relief. Exchange of offices is dealt with in s. 26 of the Act of 1935, see p. 543.

[41] S. 45 (1), proviso (a), (b), (c).

[42] Act of 1923, s. 17; see p. 242; and see p. 518.

[43] See p. 240, note [7].

[44] Sched. E, r. 1, see p. 483.

[45] R. 5, as amended by Act of 1922, s. 18 (5), see p. 484. As to cesser of employment or pension, see rr. 2, 3.

[46] Act of 1924, s. 28 (see p. 523), passed in consequence of the decision in *M'Donald* v. *Shand*, [1923] A. C. 337.

[47] Sched. E, rr. 11, 15, 18, see pp. 485—486. "Department" in r. 18 means a Government Department. *Pickles* v. *Foster*, [1913] 1 K. B. 174.

annuities in respect of service in the Armed Forces of the Crown, payable otherwise than out of the public revenues of Great Britain or Northern Ireland, but paid to residents within these countries.[48] The tax may be deducted against payments of arrears.[49] But if it cannot be so deducted, or if the salary, etc., has already been paid, then the tax is levied directly upon the persons charged;[50] this cannot, however, be done, unless that person has previously been served with a notice of assessment and a demand for payment.[51]

If the tax has been computed by reference to the amount of emoluments for the previous year of assessment, and the actual amount for the current year is less, relief is to be given by computing the tax on the smaller amount.[52]

Tax-free Emoluments.—If the payer of any of the income considered in this Chapter (other than voluntary pensions, and the annuities paid out of superannuation funds)[53] is bound by contract or enactment to make a payment to the recipient or for his benefit in respect of income tax,[54] the amount of his liability is reduced to that which he would have had to pay if the standard rate had remained at *5s. 6d.* in the £ and the reliefs had remained as they were before the passing of the No. 2 Act of 1939,[55] and as to surtax, if the rates for the year 1937—38 had remained in force.[56] This reduction, however, applies only where the liability arises under a contract made, or an enactment passed, before September 3, 1939, and not varied or amended in this respect, on or after that date.[57]

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[48] Finance Act, 1923, s. 17, see p. 518, see also p. 240

[49] Sched. E, rr. 1 (1), 12, see pp. 483, 485. [50] R. 13.

[51] *Berry v. Farrow*, 1914 1 K. B. 632, see p. 399

[52] Offices and Employments Act, 1944, s. 5 (1), see p. 684, this applies to surtax as well. Sub-s. (2) seems to give a person who served with the Forces in the first seven months of 1944 (5), the right of discharge in respect of any civilian emoluments earned in 1943 - 44, which is given by s. 3 of the Employments Act, 1943

[53] See p. 248, above

[54] *Cf. North British Ry. v. Scott*, p. 243.

[55] Act of 1941, s. 26 (2) (see p. 661), read with s. 27 (1) (c), for such reliefs, see p. 20[1], note [24], there was also relief from tax on one fifth of earned income, but not on more than £300. Act of 1925, s. 15 (1), as modified by No. 2 Act of 1931, s. 8 (1), and 4th Sched.

[56] Act of 1941, s. 26 (3); *cf.* s. 25, p. 208

[57] S. 26 (1). Adjustments of the recipient's tax payable on or before 1st January 1942, are provided for in sub-s. 4

CHAPTER 12

PERSONS LIABLE TO BE ASSESSED

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Liability to Direct Assessment—As has been seen in the preceding chapters, practically everything that is income is within the scope of the income tax, and a great part of the tax is levied by way of deduction at the source.[1] Consequently the provisions which are dealt with in this chapter, as to the particular persons who are liable to make returns, to be assessed to the tax, and to pay it to the Inland Revenue collectors are, in the main, machinery provisions; they do not as a rule impose a burden which would not otherwise be imposed, but direct where the burden is, in the first instance, to be placed.

Residence in the United Kingdom does, however, in several classes of cases, of itself impose a burden; while in others, it is of importance only as indicating the person through whom a non-resident person may be assessed. A non-resident, for instance, who possesses property or exercises a trade within the United Kingdom is liable to the tax in respect of the profits of that trade.[2] The question of "residence" of companies in this country has been discussed in connection with the question whether a trade is carried on here;[3] but the residence of individuals, and the provisions by which non-residents are made assessable in the name of residents, are dealt with in this chapter.

So far as the tax is leviable upon the income derived from the ownership or occupation of lands and hereditaments, the provisions as to the persons who have actually to pay the tax are so closely connected with those which impose the burden, and with those which regulate deduction against landlords and chargees, that it has been thought best to deal with them in one place.[4] But the provisions for the special cases of infancy,

[1] See Chaps. 2, 4, 8, 11.
[2] See pp. 70 *sqq.*
[3] Sched. D, 1 (a) (iii), see p. 472.
[4] See Chap. 2.

death and so on, considered in this chapter, have their bearing upon Schedules A and B as well as upon other Schedules.

With the exceptions above indicated, it is proposed now to consider the provisions indicating what persons are liable to pay the tax directly, as distinguished (except in the case of companies' dividends) from provisions which compel other persons to submit to deduction of tax at the source.[6]

High Commissioners and Agents-General and their staffs[6] who are resident in Great Britain or Northern Ireland are entitled to the same immunity as accredited ministers of foreign States and their staffs.[7] Further diplomatic exemptions are, or may be created, under Acts of 1941 and 1944.[7a]

Persons Assessable under the various Schedules—Under Schedule A, and under Schedule B, the person primarily liable to the income tax is the occupier (who may happen also to be the owner) of the lands the profits of which are assessed,[8] and under Schedule A there is a right to deduct tax against payments of rent, etc.[9]

Under Schedule C, the liability in the first instance is upon the Bank of England and other authorities and agents entrusted with the payment of interest, etc., out of public revenues, and they have the right to deduct tax against such payments.[10]

Under Schedule D, the tax is to be charged on and paid by the persons or bodies receiving or entitled to the income in respect of which tax is charged under that Schedule.[11] Companies and others are entitled to deduct tax against dividends[12] and certain payments,[13] and a great proportion of the tax raised under Schedule D is so collected. In the case of mines, quarries and other concerns transferred from Schedule A, the person assessed may deduct tax in paying money rents and royalties for lands and easements used or intended to be used in connection therewith.[14] A lessor of minerals who has had tax thus deducted against him, or has otherwise paid tax in respect of rent or royalties, may obtain a repayment of tax on sums wholly, necessarily and exclusively

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[6] The provisions which give trustees, agents, etc., the right to reimburse themselves stand on a different footing: see pp. 269 sqq.

[6] These terms are defined in Act of 1923, s. 19, see p. 519.

[7] Act of 1925, s. 26, see p. 527.

[7a] Diplomatic Privileges (Extension) Acts, 1941, 4 & 5 Geo. 6, c. 7, 1944, 7 & 8 Geo. 6, c. 44.

[8] See pp. 38, 57.

[9] See pp. 42—48, 52.

[10] See Chap. 4.

[11] Sched. D, Misc. Rules, r. 1, see p. 450. Sched. A, No. III, r. 4 (see p. 448), preserved (with r. 7) by Act of 1926, s. 28, and Third Sched., see p. 136. As to a receiver, see *I. R.* v. *Thompson*, [1927] 1 K. B. 290.

[12] See p. 260.

[13] Act of 1918, General Rules, rr. 19, 21, see pp. 185, 196.

[14] Act of 1934, s. 21, see pp. 126, 203; as to rents and royalties not subject to recoupment, see p. 216. No such deduction can be made in paying instalments of the purchase price of minerals: *Taylor* v. *Evans* (1856), 25 L. J. Ex. 100, see p. 194.

disbursed as expenses of management or supervision of the minerals in the year to which the rent and royalties relate.[15]

Under Schedule E, the tax upon offices, employments and pensions, as has been seen in Chapter 10, is in general accounted for by the employer or the officer, receiver or agent who pays the emoluments, and who has a right to deduct the tax in so doing; in a few cases, the recipient may be assessed direct.[16]

The provisions above summarily referred to must be read subject to the principles and rules now to be discussed, which deal with bodies of persons, and with classes of individuals; many of these apply to more than one Schedule, and some of them to all the Schedules.

Bodies of Persons : Companies—The word "person" appears in many places in the Income Tax Acts, and it may depend upon the context whether the word refers to individuals only, or whether it includes bodies of persons.[17] With regard to liability to assessment the question is not left in doubt:—

"Every body of persons shall be chargeable . . . in like manner as any person . . .":[18] and "body of persons" means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate.[19]

Any body of persons chargeable is assessed through the chamberlain or other officer acting as its treasurer, auditor or receiver for the time being, or if it is a company, through its secretary or other officer (by whatever name called) who performs the duties of secretary. Such chamberlain, officer or secretary may retain sufficient to pay the tax out of any money coming into his hands on behalf of the body.[20] He is liable to make the returns, and to do all acts required for the assessment of the body or its employees.[21]

Deduction of Tax by Companies and other Bodies—Any body of persons liable to the tax is charged on the full amount of its profits before any dividend is made of those profits in respect of any share, right or title thereto; and the body is

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[15] Finance Act, 1922 s. 26, see p. 513, the claim is to be made as under s. 33 of the Act of 1918, see p. 215.

[16] See pp. 250—256.

[17] Cf. *Curtis* v. *Old Monkland Conservative Association*, [1906] A. C. 86; but where deductions and reliefs are intended to be confined to individuals, this is generally so expressed: see pp. 8 *sqq.*

[18] General Rules, r. 1 (see p. 487), see also Sched. A, No. III, r. 4, and Sched. D, Misc. Rules, r. 1 (see note [11]), which cover parts of the same ground.

[19] S. 237, see p. 452, exemptions, etc., for charitable bodies, colleges, and so on, are considered in Chap. 13

[20] S. 106, see p. 421; there is no definition of "company."

[21] S. 106 (1); s. 207 see p. 446; Fifth Sched., see p. 482. As to returns, see Chap. 16.

entitled in paying the dividend to deduct the tax thereon,[22] at the standard rate for the year in which the amount payable becomes due.[23] A company is bound under penalties to show in its dividend warrants, etc., not only the net amount actually paid, but the gross amount corresponding to that, and the rate and amount of income tax appropriate to that gross amount.[24] A society registered under the Industrial and Provident Societies Acts, however, may not deduct tax in paying "share interest" or "loan interest" to persons whose usual place of abode is in the United Kingdom.[25]

It is under the above provisions[22, 23] that shareholders in companies and so forth have the income tax upon their dividends deducted against them "at the source."[26] A shareholder is not assessable to tax under Schedule D in respect of a dividend; but, whether the company has in fact deducted tax or not, the dividend forms part of his total income for surtax[27] as well as for reliefs. The modern view of the relation on this matter between a company and its shareholders is thus expressed: "Plainly, a company paying income tax on its profits does not pay it as agent for its shareholders.[28] It pays as a tax payer, and if no dividend is declared the shareholders have no direct concern in the payment. If a dividend is declared, the company is entitled to deduct from such dividend a proportionate part of the amount of the tax previously paid by the company; and in that case the payment by the company operates in relief of the shareholder. But no agency, properly so called, is involved."[29] More recently it has been said "that the company is one taxpayer, and that each individual shareholder is another and a separate taxpayer, on whose behalf the company deducts

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[22] General Rules, r. 20, see p. 490, and *Utd. Ltd* v. *I. R.*, p. 197. Rebates, etc., allowed by "mutual" trading companies and societies are deductible as expenses before arriving at the profits. Act of 1933, s. 31 (3), see p. 154. Words in a company's articles such as "the amount of dividend received on a share" may refer to the amount received after deduction of tax. *In re Home Grown Sugar, Ltd.*, [1935] 1 Ch. 219.

[23] Act of 1927, s. 39 (1), see p. 542. No. 1 Act of 1931, s. 7 (1) see note [30]. For the meaning of "standard rate," see p. 2. See below as to deduction, etc., before the annual Finance Act is passed.

[24] Act of 1924, s. 33, see p. 524; Act of 1940, s. 20 (1) (a), see p. 640; *Rhokana Corporation, Ltd.* v. *I. R.*, [1938] A. C. 380, see p. 196. See Supplement, p. 778.

[25] Act of 1933, s. 32 (1); relief was given to the society in this respect by sub-s. 4; see p. 154.

[26] The provisions with regard to deduction of tax against yearly and other interest (as distinguished from dividend of profits) are considered pp. 185, 196. In a winding up, arrears of preference dividend are paid without deduction of tax: *In re Dominion Tar and Chemical Co., Ltd.*, [1929] 2 Ch. 367.

[27] *I. R.* v. *Newmann*, [1934] A. C. 215, see note [31]; *Cull* v. *I. R.*, [1940] A. C. 51, see p. 263. As to the amount to be included, see Chap. 14, p. 301.

[28] The earlier, and opposite, view was indicated in, *e.g.*, *Att.-Gen.* v. *Ashton Gas Co.*, [1904] 2 Ch. 521, [1906] A. C. 10; *Brooks* v. *I. R.*, [1918] 1 K. B. 257, see p. 180; *In re Cain's Settlement*, [1919] 2 Ch. 364, 370, see p. 206.

[29] *I. R.* v. *Blott*, [1921] 2 A. C. 171 (see p. 109), *per* Lord Cave at 201; see *per* Younger, L.J., in *Bradbury* v. *English Sewing Cotton Co.*, [1922] 2 K. B. 889; and *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B. 191; *Bilson* v. *Phillips* (1924), 9 Tax C. 10; *Cull* v. *I. R.*, p. 263; *Canadian Eagle, etc.* v. *R.*, p. 194.

a tax when it pays a dividend, but on whose behalf it is not paying the tax when it pays it own tax to the Crown"; and accordingly, where a company in paying the dividend deducts a larger amount of tax than it has previously paid (because it has paid tax on an income smaller than the amount distributed) the whole of the dividend distributed to the shareholder, together with the tax deducted, forms part of his total income.[30] Again, a company had a right to deduct tax in paying a dividend out of the excess of the rents over the annual values of its property, on the ground that these rents were profits brought into charge under Schedule A,[31] although the amount of tax paid by the company was measured by the annual values and not by the rents, and although the company was not then liable under Schedule D to pay tax on the excess.[32] Whether this right is exercised or not, the shareholder must include the gross amount of the dividend in his total income.[33]

Undistributed profits of a company are not income of the shareholders,[33] though they may in certain circumstances be treated as such for purposes of surtax.[34] On the other hand, the word "dividend" in rule 20 is not limited to amounts distributed to shareholders; it is wide enough to include, for instance, the portion of the profits of an assurance company to which the holder of a "participating policy" is entitled, and that portion cannot be deducted as an expense before payment of income tax.[35] But the company can deduct tax on payment of that portion to the holder of the policy.

Like an individual, a body or company is also liable to pay on the whole of its profits without distinguishing any yearly interest, annuity or other annual payment that is payable, but is entitled to deduct tax when paying such moneys.[36]

If any dividends have been paid before the passing of the annual Finance Act, either without deduction of tax, or with a deduction at a rate which proves to be lower than that fixed

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[30] *Hamilton* v. *I. R.*, [1931] 2 K. B. 495, see p. 302, see *per* ROMER, L.J., at 521. S. 7 (1) of the No. 1 Act of 1931 (see p. 562), was passed (shortly after the decision in *Hamilton's Case*) to establish this position, but it prevents the application of r. 20, and is not itself applicable, to a dividend, or part of a dividend, which is paid out of capital, or out of profits which are not in their nature within the purview of the income tax: *Newmans* v. *I. R.*, [1933] 1 K. B. 728; see *per* ROMER, L.J., at 748—749. The H. L. in that case (below), declined to consider the application of s. 7 (1), which remains obscure. See also *Benn* v. *I. R.*, p. 302.

[31] *I. R.*, v. *Neumans* [1934] A. C. 215, see note [37]; see Act of 1940, s. 20 (1), p. 263.

[32] *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A. C. 432 (see p. 71), arose in respect of the same company and property as the case last cited.

[33] *I. R.* v. *Burrell*, [1924] 2 K. B. 52, see p. 304; see *per* POLLOCK, M.R., at 65, and the observations of SARGANT, L.J., at 73.

[34] Under the Act of 1922, s. 21, as amended by subsequent Acts, see Chap. 15.

[35] *Last* v. *London Assurance Corporation* (1885), 10 App. Cas. 438, see p. 120; see also *Sheldrick* v. *South African Breweries*, p. 20. As to distributions of bonus shares, see *I. R.* v. *Blott* (p. 303), and the other cases there cited.

[36] General Rules, r. 19 (1), which is discussed at length, pp. 185—195. But as to registered societies, see note [35], p. 260.

by the Act, the paying agents may be called upon for returns, and the payee may be directly assessed.[37]

By the Finance Act, 1930, further provision is made for difficulties of this and similar kinds; preference dividends are dealt with separately from dividends at variable rates.[38] In the first place, the possibility of the standard rate being lower than that prevailing when tax was deducted is provided for; this provision extends to interest on debentures or other securities as well as to "preference dividends"[39] Further, preference dividends are brought within the scope[40] of section 211 (2) of the Act of 1918, so that, if the tax has not been deducted or has been deducted at a lower rate than that fixed by the annual Finance Act, before the passing of that Act, the paying company may deduct the balance in making the next payment.[41] As regards dividends payable at varying rates, the company is given no further right to deduct; but the recipient's income is for all income tax purposes to be computed as if the deduction had been made at the standard rate for the year.[42]

Payments of Dividends, etc., "Free of Income Tax"—The income tax on the dividends distributed forms part of the profits of the company; it is a proportionate part which the Revenue is entitled to take out of the profits, and it is not a deduction before arriving at the profits.[43]

"A dividend free of tax . . . is one of such an amount as after the deduction of the proper rate of tax leaves the rate of interest specified available for the shareholders. . . . The gross amount of the dividend will vary with the amount in respect of tax which has not been received by the shareholder from the company. The amount not so received is the amount

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[37] Act of 1918, s. 211 (1); the assessment is made under Case VI; see Chap. 10, p. 237. S. 20 of the Act of 1940 (see p. 640) does not affect this matter, see sub-s. 3, proviso.

[38] Act of 1930, s. 12, see p. 552. By sub-s. 4, in the case of preference shares or stock which carry a right to participate in profits, only that part of the dividend that is payable at a fixed gross rate is treated as a "preference dividend." A preference dividend paid without deduction of tax is not within s. 12. Act of 1940, s. 20 (2), see p. 640.

[39] Sub-s. 1, as to the meaning of "securities," cf. *Singer* v. *Williams*, [1921] 1 A. C. 41, p. 225.

[40] Sub-s. 2 (a), this provision does not apply to preference dividends paid in arrear in a winding up, see note [36], as to those paid out of capital receipts, see note on *Gresson* v. *I. R.*, [1930] 2 K. B. 246, p. 302. Preference dividends were already within the scope of s. 211 (1), see note [37].

[41] If there is no subsequent payment to be made, the company may recover the balance as a debt to it. The provisions of s. 211 (2) of the Act of 1918 are more fully considered p. 295.

[42] Act of 1920, s. 12 (3), see p. 640. Act of 1940, s. 20 (1) (b), (2), see p. 606; as to the effect on total income, for purposes of surtax and of allowances, see Chap. 14, p. 302. See also No. 1 Act of 1931, s. 7 (2), proviso, note [44], and p. 302.

[43] See the observations of BUCKLEY, J., in *Att.-Gen.* v. *Ashton Gas Co.*, [1904] 2 Ch. 324, which were adopted by the House of Lords, [1906] A. C. 10.

of the tax on the gross dividend, and is, in substance and in fact, deducted by the company within the meaning of rule 20."[44]

Accordingly, where there is a limit by way of percentage put by statute or otherwise upon the amount that may be distributed to the shareholders (or to shareholders of any particular class, such as preference shareholders), it is not lawful to pay a dividend at the fixed rate per cent. "free of income tax."[45] Thus, in paying interest on prepaid calls at a rate per cent. fixed by the company's articles, tax must be deducted.[46]

Where a company has obtained the relief in respect of Dominion income tax,[47] it could deduct only the United Kingdom tax as reduced by that relief, even against the holders of a particular class of shares (such as preference shares) who were entitled to a dividend at a fixed rate;[48] and the same rule applied where the company had itself received the relief by way of a reduced deduction of tax at the hands of another company.[49]

Again, where a dividend is paid "free of income tax" (whether lawfully or not) the income tax "in substance and in fact deducted" by the company, as well as the dividend received forms part of the income of the shareholder for the purpose of surtax,[50] and for any relief which depends on total income.[51] The same rule now applies wherever the dividend is paid without the full deduction of tax authorised by rule 20 of the General Rules;[52] and this is so, whether the dividend exhausts the amount available for distribution, or whether it does not.[53]

Under an agreement, by which the manager of a company is to receive a percentage on the "net sum available for dividends," that net sum includes the amount payable as income tax by the company, and deductible in paying dividends.[54]

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[44] *Gold Fields American, etc. Co.* v *Consolidated Gold Fields* (see p. 20), per TOMLIN, J., [1926] Ch. 338, 356; No. 1 Act of 1931, s. 7 (2); see p. 302. This sub-section, like sub s. 1, is not applicable to a dividend, or a part of a dividend, which is paid out of profits not in their nature chargeable with tax: *Neumann* v. *I. R.*, see p. 261, note [31]. The proviso to sub-s. 2 purports to prevent the application of the above principle to preference dividends payable at a fixed gross rate, see note [39]; the reason is not understood; but see p 302, note [50]. For r 20, see note [22], p. 260.

[45] *Att.-Gen.* v. *Ashton Gas Co.*, above. Cf. *South American Stores, Ltd.* v. *I. R.* (1926), 12 Tax C. 906, p 206.

[46] *Noel* v. *Trust, etc. Co. of Australasia, Ltd.*, [1937] 1 Ch. 438, p 206.

[47] See p. 19; and see *I. R.* v. *Dalgety & Co., Ltd.*, p. 22.

[48] *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B 173. But see Supplement.

[49] *Gold Fields American, etc. Co.'s Case*, note [44], the company had, in fact, received a reduced deduction though the dividend purported to be paid "free of tax"; see the passage quoted above.

[50] *Samuel* v. *I. R.*, [1918] 2 K. B. 553, see p 302, cf. *Hartland* v. *Diggines*, [1926] A. C. 289, p. 243.

[51] See Chap. 14. [52] See pp 259 *sqq.*; Act of 1940, s. 20 (1), (3), see p. 640.

[53] The former was the case in *I. R.* v. *Neumann*, see p 261, note [31]; the latter in *Cull* v. *I. R.*, [1940] A. C. 51. Both decisions are overridden on this point by the enactment last cited; see p. 302.

[54] *Johnston* v. *Chestergate Hat Co.*, [1915] 2 Ch. 338, *Edwards* v. *Scunton Hotel, Ltd.*, [1943] 1 All E. R. 170.

Partnerships—Where a trade or profession (the profits of which are assessable under Case I or Case II of Schedule D) is carried on by two or more persons jointly, the assessment of the profits is made in the partnership name separately from any other assessment to which any one of the partners is liable; it makes no difference that any of the partners is a "sleeping partner;"[55] all are liable jointly for the tax charged on the partnership.[56] Thus, where a trading ship belongs to part-owners, a single and distinct assessment is made upon them in respect of the profits of that ship, although the greater part of the shares is owned by one of the part owners, who manages, and, in fact, controls the trade of the ship, and although he is also the owner or part-owner of another ship;[57] the profits of the other ship will form the subject of a separate assessment.[58] A French "société en nom collectif," carrying on business in this country, is not a partnership.[59] A separate assessment must always be made for a separate partnership unless the partners are the same people;[60] and separate assessments for different partnerships in different places are specifically provided for.[61] A partnership may be assessed as such after its dissolution, *e.g.*, if it carries out after that date contracts executed before.[62] In short, "a partnership firm is treated as an entity distinct from the persons who constitute the firm," and a receipt for work done for one of those persons,[63] or a payment of rent to one of them,[64] is to be credited or debited in computing the firm's income.

Returns of the partnership income have to be made by the "precedent acting partner," that is, the first person named in the partnership agreement or (if there be no agreement) in the usual name of the firm, who is an acting partner; if none of the partners reside in this country, the returns are to be made by the resident agent, manager or factor. The Commissioners may also require returns from every partner.[65]

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[55] Sched. D, Cases I and II, *r.* 10, see p. 476. The partnership must exist in fact; it is not sufficient that a partnership agreement has been entered into: see *McKie* v. *Lauk* (1925), 9 Tax C. 511; *Dickenson* v. *Gross* (1927), 137 L. T. 351, see p. 9; see also *Lindsay* v. *I. R.*, 1933 S. C. 23, p. 68; but its existence may give rise to a question of law if it depends on the construction of a deed: *Pratt* v. *Strick* (1932), 17 Tax C. 488, see p. 148. If a partnership does exist in fact, the assessment must be made as the rule directs, as from the date when the agreement was executed: *Ayrshire Pullman Services* v. *I. R.* (1929), 14 Tax C. 754, see p. 147, note [61]. See also *Fenston* v. *Johnstone* (1940), 23 Tax C. 29, p. 236

[56] As to partnerships in relation to income tax, see *City of London Commrs.* v. *Gibbs*, [1942] A. C. 402, and especially *per* Viscount Simon, L.C., at 413, 414.

[57] *Att.-Gen.* v *Borrodaile* (1814), 1 Price, 148. *Farrell* v. *Sunderland Steamship Co., Ltd.* (1903), 4 Tax C. 605, see p. 71.

[58] Cases I and II, *r.* 16, proviso, see p. 479.

[59] *Dreyfus* v. *I. R.* (1929), 14 Tax C. 560

[60] See *John Gardner and Bowring, Hardy & Co., Ltd.* v. *I. R.* (1930), 9 A. T. C. 232.

[61] *Hillerns* v. *Murray* (1932), 48 T. L. R. 213; 17 Tax C. 77.

[62] *Watson and Everitt* v. *Blenden*, see p. 103; see *per* Rowlatt, L.J., 18 Tax C. 409; and *per* Lords Macmillan and Wright in *City of London Commrs.* v. *Gibbs*, [1942] A. C. 412, 430.

[63] *Headie* v. *Veitch*, [1934] 1 K. B. 535, see p. 126.

[64] R. 10 (2), (3), (4), the assessment of non-resident persons is provided for by General Rules, (see p. 270), and their mention here is superfluous. As to returns, see Chap. 16.

If the control or management of the partnership's trade is situate abroad, then the trade is deemed to be carried on by persons resident outside the United Kingdom, although some of the partners reside in this country and some of the trading operations are conducted in this country; but the partnership is assessable in respect of the profits of those operations to the same extent as, and to no greater extent than, if it were an individual resident abroad;[65] and if any assessment can be made, it may be made in the name of any resident partner.[66]

Partnership does not defeat the right of a partner to claim any relief,[67] to claim an adjustment on account of loss in a trade or profession,[68] or to claim a set-off against his profits of the partnership in respect of the loss made in a distinct trade.[69] In any claim for relief the partner's income is deemed to be the share to which he is entitled, during the year to which his claim relates, of the partnership profits as estimated for income tax purposes;[70] and not the actual share of profits received by him for that year.[71] A lump sum payment to a retiring partner in satisfaction of his share of profits does not affect the calculation of the income of the remaining partners.[72]

The effect of a change or dissolution of partnership, and of a succession by a partnership to a trade, have been considered in connection with the profits of trade.[73]

Effect of Residence in the United Kingdom—The question whether a person is "residing" or "resident" or "ordinarily resident" in the United Kingdom may be of importance for various purposes. For instance, with certain exceptions, a person not resident in this country cannot obtain any relief in respect of earned income or deduction of tax on assessable income, or relief in respect of insurance premiums and similar payments.[74] A person "residing" in the United Kingdom is liable to tax in respect of profits from any kind of property and of the profits of a trade, etc., carried on by him in this country or elsewhere;[75] and although the profits of a trade carried on in this country are chargeable whether it is carried on by a resident or not, the question whether an individual, a partner-

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A partnership has been held to exist in respect of joint transactions between a firm in this country and a firm in the U.S.A.: *Morden Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450, see p. 90.

[65] See pp. 80, 89.

[66] Sched. D, Cases I and II, r. 12 (1), (2), see p. 478.

[67] S. 20, see p. 408. See also Chap. I and the cases cited in note [65].

[68] S. 24, see p. 413.

[69] Sched. D, Cases I and II, r. 13, see p. 478; and see p. 152.

[70] S. 20, proviso (ii), see p. 408. See also Chap. I.

[71] *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, see p. 301; *Lewis* v. *I. R.*, [1933] 2 K. B. 557; and see *per* ROWLATT, J., in *I. R.* v. *Blott*, [1920] 1 K. B. 114, at 131.

[72] *Rutherford* v. *I. R.*, 1926 S. C. 689, 10 Tax C. 683.

[73] See pp. 147—150.

[74] Finance Act, 1920, s. 24, see p. 408, and see Chap. I, pp. 9 *sqq.*

[75] Sched. D, I (a) (i) (ii), and Cases I and II, see *Colquhoun* v. *Brooks*, p. 80; and *Smith* v. *Greenwood*, p. 89; [1921] 3 K. B., *per* ATKIN, L.J., at 594.

ship or a company is residing in this country often has an intimate connection with the question whether the trade is carried on here.[76] In regard to some "foreign possessions" a person residing here is taxable on the profits only so far as they are received in this country,[77] but in respect of foreign securities and other possessions, such as stocks, shares and interests in land, the extent to which he is to be charged may depend on whether he is or is not "ordinarily resident in the United Kingdom."[77] Liability to tax in respect of interest on the securities of a foreign State or British possession,[78] and on the stocks of foreign companies,[79] if payable in this country, as well as Indian annuities,[79] if so payable, depends on "residence"; liability in respect of War Loan interest, etc., on "ordinary residence."[80] The provisions of the Act of 1936 for "preventing the avoiding of liability by means of transfers of assets" abroad are applicable only to cases of "individuals ordinarily resident in the United Kingdom."[81]

A person "who is in the United Kingdom for a temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided here for six months in any year, is not taxable in respect of any foreign possessions or securities.[82] Provisions for the assessment of non-resident persons through resident agents, trustees and so on apply to almost all forms of the tax.[83] And a person whose ordinary residence is in the United Kingdom does not escape liability because he has left the country for the purpose only of occasional residence abroad:[84] that is, "residence [abroad] taken up or happening as passing opportunity requires or admits."[84]

Meaning of "Residence".—The question of residence with regard to companies and partnerships has been dealt with in connection with the carrying on of a trade in the United Kingdom.[85]

An individual can have two residences at the same time, although he cannot have two domicils; and there is nothing in any of the material provisions which points to the "principal

[76] See pp. 78, 79.
[77] Sched. D, Cases IV and V; see Chap. 9, p. 219. The phrase "ordinarily resident" occurs also in connection with the place of charge, see p. 366.
[78] Sched. C, r. 2 (d), see p. 469.
[79] Sched. D, Misc. Rules, r. 7, see pp. 184, 191.
[80] Act of 1918, s. 46 (1), see p. 417. Appeals may be brought on questions of this kind arising under the provisions cited in notes [76] - [79] (above) to Special Commissioners: Act of 1924, s. 27, see p. 522.
[81] Act of 1936, s. 18, see p. 221.
[82] Sched. D, Misc. Rules, r. 2, see p. 482, and see note [84].
[83] See, *e.g.*, s. 101, and General Rules, 4—14, pp. 98 *sqq.*, and pp. 270 *sqq.*
[84] General Rules, r. 3, see p. 487, and see p. 269.
[85] *I. R.* v. *Combe* (1932), 17 Tax C. 406, *per* CLYDE, L.P., at 410.
[86] See pp. 79 *sqq.* A company may reside in more than one country: *Swedish Central Ry.* v. *Thompson*, [1925] A. C. 495, see p. 79. It has not been decided that a partnership may do so.

residence" as the governing fact. A place of residence is a place "to which it is quite easy for the person to resort as his dwelling-place whenever he thinks fit, and to set himself down there with his family and establishment . . .; if he occupies that place of residence for a portion of the year . . . he is residing there in the course of that year."[87]

A merchant,[87] therefore, or the servant of a commercial company,[88] who lives most part of the year in a foreign country where he exercises his business or employment, but possesses a dwelling-house in the United Kingdom in which he lives each year for some months, is residing in this country.[89] An American citizen who lived most part of the year in the United States, but leased a lodge and shootings in Scotland, where he lived for two months in each year during the shooting season, was "residing" in the United Kingdom,[90] and was not "in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence therein."[91] In that phrase "'temporary' . . . means that it is casual or transitory residence, as distinguished from a residence, of which there may be more than one, but which may be habitual or permanent."[90]

In the case[92] of a merchant carrying on business in India, who in most years spent several months with his wife and family in the United Kingdom and in a house possessed by his wife, but who had lived for the whole year of assessment at his usual residence in India, the decision that he was not "residing" in the United Kingdom appears to conflict with the principles on which the decision on this point in *Lloyd* v. *Sulley* proceeded, and to be of doubtful authority.[92]

A sea captain having a house in Scotland where his wife and children live is "residing" in the United Kingdom, and not for a temporary purpose only,[94] and he is "residing" even though he has been absent from the United Kingdom throughout the year of assessment.[95]

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[87] *Lloyd* v. *Sulley* (1884), 11 R. 687, 2 Tax C. 37, *per* Lord President Inglis. The actual decision in this case is in part overruled by *Colquhoun* v. *Brooks*, see p. 80, but the principles it lays down with regard to residence have been approved and followed in *I. R.* v. *Cadwalader* (1904), 7 F. 146, 5 Tax C. 101 (where the various decisions are reviewed); *Thomson* v. *Bensted*, 1919 S. C. 8; 7 Tax C. 137.

[88] *Thomson* v. *Bensted*, above, cf. *Foulsham* v. *Pickles*, [1925] A. C. 458, p. 229.

[89] *Lloyd* v. *Sulley*, above; *Peel* v. *I. R.*, 1928 S. C. 205, 13 Tax C. 443; as to the amount on which such a merchant is assessable, see, however, *Colquhoun* v. *Brooks*, p. 80. Cf. also *Att.-Gen.* v. *Coote* (1817), 4 Price, 183.

[90] *I. R.* v. *Cadwalader*, above; see *per* Lord McLaren, 5 Tax C. at 509; followed where the hunting-box used was not leased or owned by the taxpayer: *Loewenstein* v. *de Salis* (1926), 10 Tax C. 424.

[91] See now Sched. D, Misc. R. 2, p. 450.

[92] *Turnbull* v. *Foster* (1904), 7 F. 1; 6 Tax C. 206.
See *per* Lord Dundas in *Thomson* v. *Bensted*, above.
Young v. *I. R.* (1875), 2 R. 925, 1 Tax C. 57. See notes [88], [91], above.
Rogers v. *I. R.* (1879), 6 R. 1109; 1 Tax C. 225; if the decision in *Turnbull* v. *Foster* (above) is right, then this case was wrongly decided.

Residence need not necessarily be in a fixed structure; and an American citizen who had lived for twenty years on a yacht anchored within a few hundred yards of the English shore was held to have been properly assessed under Schedule D as a person residing in the United Kingdom.[96] In the above cases, the person in question has had "a residence" in this country, in the sense of a dwelling-house (or a yacht) to which he could or did resort; but this is not necessary, and a person who stays in hotels and so on may be resident in the United Kingdom, if his visits to this country form part of the person's habits of life and are sufficiently prolonged.[97] In such circumstances, a person may be "ordinarily resident" as well as resident.[98]

But the question is one of fact in each case;[99] and a stay in hotels or in the houses of friends in this country is not by itself sufficient to establish "residence" if, on the surrounding circumstances, it is found that the visit is paid merely in the course of travel, and not as a part of the regular order of life.[1]

Temporary presence in the United Kingdom or absence therefrom—A person who has a residence in the United Kingdom has already been seen to be liable to income tax charged under Schedule D though he is only in this country for a small portion of the year,[2] and although he has been absent for the whole year;[3] but a person who "is" in the United Kingdom for some temporary purpose only, and not with any view or intent to establish his residence therein, is liable to tax or profits of foreign possessions or securities[4] if he "resides" in the United Kingdom for an aggregate of six months in the year, whether in one visit or in several visits.[5]

On the other hand, a British subject whose ordinary residence has been in the United Kingdom purports to be made liable to tax upon the whole of his income (from a number of specified sources) although he has left the United Kingdom for the purpose

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[96] *Bayard Brown* v. *Burt* (1911), 5 Tax C. 667.

[97] *Reid* v. *I. R.*, 1926 S. C. 589, 10 Tax C. 673; *Lysaght* v. *I. R.* (1928), 14 Tax C. 726; *Elsbury* v. *I. R.*, [1937] 2 K. B. 251. See also *In re Mackenzie*, [1940] W. N. 360, p. 222. In *I.R.* v. *Combe* (see p. 266, note [94]), the above conditions were found not to be satisfied.

[98] This was the point decided against the taxpayer in the cases cited in the last note and in *Peel* v. *I. R.*, above. The nature of "ordinary residence" has been considered p. 221.

[99] *Withers* v. *Wayward* (1926), 21 Tax C. 724.

[1] *I. R.* v. *Zorab*, 1 K. B. v. *Brown* (1926), 11 Tax C. 289, 292, the subsequent decision in *Lysaght* v. *I. R.* does not affect the statement in the text. In *Lysaght's Case* the Commissioners came to an opposite finding of fact, which was also upheld.

[2] *Lloyd* v. *Sulley*, *I. R.* v. *Calcutta Jute Co.*; *Thomson* v. *Bunsted*; *Young* v. *I. R.*, above.

[3] *Rogers* v. *I. R.*, above; see, however, *Turnbull* v. *Foster* and remarks thereon, note [94], above.

[4] See Chap. 9.

[5] Sched. D, Misc. Rules, r. 2, see p. 482. The word "resides" is obviously used in a different sense from that of "residence" in the earlier part of the rule, and corresponds with "is" in that part. See also note [96], above.

only of occasional residence abroad.[6] The language of this rule is very obscure; it clearly cannot impose on such a person a higher charge of tax than if he had remained in this country; and it appears to serve no other purpose than to show (if it be necessary to do so) that the occasional absence of a resident does not excuse him from liability to tax.

Trustees and Agents chargeable for Beneficiaries and Principals—Provision is made in a series of rules[7] for the assessment and charging of tax due from persons who possess sources of income, but who for various reasons cannot make returns or cannot be assessed, in the names of persons who act for them in one capacity or another. It is important to note that these rules are merely administrative provisions, and do not impose any substantive liability to the tax; nor do they enlarge or restrict any such liability.[8] "They really are machinery for enabling the Crown in common cases, to get the income tax which is properly payable."[9] Moreover, "this section[10] is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation."[11]

If the Crown can get the income tax from the person primarily liable, the mere fact that he belongs to a class of persons on behalf of whom a trustee or agent is usually assessed does not free him from liability.[12] A trustee may be taxable for income received by him, which he is obliged to hand over to the beneficiary as capital.[13]

Income of Infants and other Incapacitated Persons—The income of any "incapacitated person" (a term which means "any infant, married woman, lunatic, idiot or insane person,"[14] if he is himself incapable of making a return or cannot be assessed, is to be assessed and charged in the names of the trustee, guardian, tutor, curator or committee having the control of his property, whether the incapacitated person resides in the United Kingdom or not.[15] But there are separate provisions

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[6] General Rules, r. 3, see p. 487.
[7] General Rules, rr. 4—14, see p. 487, s. 101, see p. 419.
[8] *R. v. Assessment Commissioners, Ex p. Huxley*, [1916] 1 K. B. 788. *Drummond v. Collins*, [1915] A. C. 1011, see p. 233; *Greenwood v. Smith*, [1922] 1 A. C. 417, see p. 271.
[9] *Ex p. Huxley, per* COZENS-HARDY, M.R., at 797.
[10] S. 41 of the Act of 1842, the precursor of rr. 4, 5 and 13 of the General Rules in the Act of 1918.
[11] *Per* Lord PARKER in *Drummond v. Collins*, [1915] A. C. 1019.
[12] *Ex p. Huxley*, above; *Tischler v. Apthorpe* (1885), 2 Tax C. 89, see p. 98.
[13] *Reid's Trustees v. I. R.* [1929], S. L. T. 372, see p. 212. As to a trustee resident in the United Kingdom, see note [15].
[14] See definition in s. 237, p. 453.
[15] General Rules, rr. 4, 5, when r. 5 says the assessment is to be "to the like amount" as if "such non-resident person . . . were resident," it merely means that his income shall not bear less tax because he cannot be reached personally: cf. remarks on r. 3, above. A parent, guardian or tutor is also by s. 161 (1) (see p. 437), made liable for tax in default of payment by an infant: but only to the extent to which

as to married women.[16] The person so chargeable is responsible for all matters to be done with regard to assessment and payment of tax[17] and is to deliver statements of profits;[18] he may retain sufficient to pay the tax out of money coming into his hands, and is indemnified for all such payments made in pursuance of the Act.[19]

An infant who earns an income by his own skill is capable of making a return and of paying the tax; if he has no guardian or trustee, he does not thereby escape assessment, but is liable personally.[20]

In order to make a guardian chargeable on behalf of an infant, it is not necessary that he should have control of the property or concern from which the infant's income is derived, so long as he receives money of the infant; and where remittances were made to this country by trustees residing abroad for the maintenance and education of infants residing here, and were received by their mother and guardian, she was held to be assessable in respect of the sums so received.[21] If the trustee is a British subject resident in the United Kingdom, he may be liable in respect of the whole income of a foreign fund.[22]

Profits of Non-resident Persons.—Persons not resident (other than "incapacitated persons") are assessable and chargeable in the name of any factor, agent,[23] receiver, branch or manager, whether such factor, etc., has receipt of the profits or gains or not;[24] all profits or gains arising directly or indirectly through such factorships, etc., are to be included in the assessment.[25] These two rules are not confined to trade profits, though that is their chief application; they do not extend the scope of the tax; the first merely extends the method of carrying out the charge imposed by Schedule D, and the second gives effect to that extension. Accordingly, where the trade of the non-resident is not "carried on in the United Kingdom,"[26] the fact that he has what may be described as a "branch" in the United

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he receives money on the infant's behalf. *R.* v. *Newmarket Commrs., Ex p. Huxley* (above), *per* PHILLIMORE, L.J., [1916] 1 K. B. at 801.

[16] See p. 273. [17] R. 13, see p. 489.

[18] S. 101, see p. 419. [19] R. 14.

[20] *Ex p. Hurley*, above; the taxpayer was a successful jockey. The liability of trustees with regard to income tax on an infant's behalf was incidentally discussed in *I. R.* v. *Longford*, *I. R.* v. *Pakenham*, [1928] 1 K. B. 118, [1928] A. C. 252, see p. 330.

[21] *Drummond* v. *Collins*, [1915] A. C. 1011, see p. 2[illegible]. The observations of Lord SUMNER in *I. R.* v. *Longford*, [1928] A. C. 260, were doubtless intended to be read subject to that decision. See also *Fry* v. *Shiel's Trustees*, 1915 S. C. 159; 6 Tax C. 583, see p. 13. [22] *Kelly* v. *Rogers*, [1935] 2 K. B. 446, see p. 220.

[23] The subject of agency in connection with the carrying-on of trade is considered pp. [illegible] *sqq.*

[24] General Rules, rr. 5, 6, see p. 487; as to the construction of r. 5, see note[15] above. The non-resident local board of a British company cannot itself be assessed in the name of an agent; *Aramayo Francke Mines, Ltd.* v. *Ecott*, [1935] A. C. 534; see p. 89; see also *Boulos* v. *Alalusia Steamship Co.* (1925), 41 T. L. R. 691.

[25] R. 6. [26] See note [23].

Kingdom is not sufficient to make him taxable on the profits of the trade.[27]

A special and somewhat drastic provision[28] is made for cases where a resident person carries on business with a non-resident (not being a British subject or a British, Indian, Dominion, or Colonial firm or company) and the non-resident substantially controls the resident person so as to reduce the profits of the latter to nothing, or to something less than the ordinary profits which might be expected to arise from that business if it were not controlled; in such a case the resident person is assessable as if he were an agent of the non-resident.

This rule 7 was first enacted as sub-section 3 of section 31 of the Finance (No. 2) Act, 1915,[29] and that sub-section has been held to "introduce a remarkable extension of the scope of the income tax, because it provides that a person in the position [described], although he is not an agent, may nevertheless be charged as if he were an agent," and that he shall be "taxable in respect of a notional business which is not carried on in the United Kingdom."[30]

It is submitted that as far as the income tax is concerned this decision is not consistent with that in *Greenwood* v. *Smidth*;[31] and that sub-section 3,[32] with the two following sub-sections, was intended only to set up an effectual machinery for assessment and collection in cases where the non-resident person does in fact carry on a trade in the United Kingdom, but does so (in pursuance of such an arrangement as is there described) by means of a resident person who cannot be described as either a "factor, agent, receiver, branch or manager."

Apart from such an arrangement as is last mentioned, these rules do not apply so as to make a non-resident person chargeable in the name of a broker or general commission agent, or of an agent not being an authorised person carrying on the regular agency of the non-resident, in respect of profits arising from sales or other transactions carried out through such broker or agent.[33] Nor does any sale or other transaction between two

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[27] *Greenwood* v. *Smidth*, [1921] 3 K. B. 583, [1922] 1 A. C. 417 (see p. 89); sub-ss. 1 and 2 of s. 31 of the Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), which were discussed in that case, were the precursors of General Rules 5 and 6 in the Act of 1918.

[28] R. 7

[29] See note [27] above.

[30] *Gillette Safety Razor, Ltd.* v. *I. R.*, [1920] 3 K. B. 358, *see per* ROWLATT, J., at 374—375: the case arose upon excess profits duty.

[31] See note [27] above.

[32] Now r. 7. *Rr.* 8 and 9 are the successors of sub-ss. 4 and 5 of s. 31 of the Act of 1915; rr. 10 and 11 of sub-ss. 6 and 7.

[33] R. 10, *see* p. 486. In *Wilcock* v. *Pinto*, [1925] 1 K. B. 30, *Garnsey* v. *Mace, etc.* (1926), 135 L. T. 634; *Maclaine* v. *Eccott*, [1926] A. C. 424, *Belfour* v. *Mace* (1928), 138 L. T. 338; *Tara* v. *Scanlan, etc.*, [1928] A. C. 34 (see pp. 89, 90), the agents were held to be such authorised persons, and Finance (No. 2) Act, 1915, s. 31 (6), or r. 10 (see last note), afforded no protection. As to brokers, see Finance Act, 1925, s. 17, p. 526.

non-resident parties give rise to a liability to assessment in the name of a resident person under these rules.[34] The making of the actual contracts of sale is among the transactions referred to in rules 10 and 11.[35]

The agent or other person chargeable is answerable for all matters with regard to assessment and payment of the tax, and is liable to make returns; he may retain sufficient to pay it out of money coming into his hands, and is indemnified to that extent.[36]

Where the Commissioners consider that the true amount of the profits of the non-resident cannot readily be ascertained, they may decide to assess the non-resident person on a percentage of the turnover,[37] and the resident person may be required to furnish returns of the business done through him or with him by the non-resident person;[38] and either the resident or the non-resident may require the question of the percentage to be referred to a referee.[39]

Where the non-resident person is a manufacturer or producer of foreign goods or produce, and is assessed in the name of a branch, manager, agent, factor, or receiver, the person in whose name the assessment is made may apply to have the profits of manufacture or production eliminated, so that the assessment will be reduced to the amount of the profits which a merchant or retailer would have made.[40]

The whole of the above rules must be read subject to the general principle[41] that, where practicable, the Inland Revenue authorities may require the non-resident person himself to make returns and to pay the tax; the rules do not relieve him of any liability. Thus, where a partner in a foreign firm of wine-merchants spent a part of every year in England, he failed to upset a direct assessment on the ground that it ought to have been made upon his agents and not upon himself.[42]

A partnership, the control and management of whose trade is situate abroad, is assessable in the name of any partner resident in the United Kingdom, upon the profits of any trade carried on by it in this country.[43]

Reciprocal arrangements with foreign or Dominion Governments for relief from double taxation of profits

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[34] R. 11; *Maclaine* v. *Eccott*, above. See p. 89, note [75].

[35] See the case last cited. [36] Rr. 13, 14, and s. 101

[37] R. 8, see p. 89. [38] R 8.

[39] R. 9 (2); as to appeals in cases of this kind, see p. 394.

[40] R. 12; the rule shows the manner of making such application.

[41] See p. 269.

[42] *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, see pp. 88, 389. It was not necessary for the purpose of this decision to establish that the partner's stay in England constituted residence in the United Kingdom, for he was held to be carrying on a trade in this country. See also *Whitney* v *I. R.*, [1924] 2 K. B. 614, 618; [1926] A. C. 42, 53, p. 348; *Duchworth* v. *Lowe*, see p. 274.

[43] See p. 265.

of certain kinds are authorised by the Finance Act, 1930;[44] and by the Finance (No. 2) Act, 1945.[44a]

Receivers and Liquidators—A receiver appointed by any Court in the United Kingdom which has the direction or control of any property charged with the tax is liable to make returns, to be assessed, and to pay tax as if the property were free from such direction and control.[45] A liquidator may be assessed for payments which accrued to the company in the course of their trade before the date of the liquidation, but which are paid thereafter.[46]

Custodian of Enemy Property—By the Act of 1944, provision is made for the assessment of a custodian of enemy property to tax in respect of income which becomes payable to him by the operation of the law relating to the trading with the enemy, and for payment of the tax out of money in his hands.[47]

Married Women—"Married women" are included in the definition of "incapacitated persons";[48] but the rules[49] with regard to the assessment of such persons generally are very substantially modified as regards married women. Apart from any special application, where a married woman is living with her husband, her profits are deemed to be the profits of the husband, and assessed in his name, and not in her own name, or in that of her trustee.[50] The liability in such a case is upon the husband, and he has no claim against the wife's estate to recoup tax paid by him in respect of her income.[51] But it is only so long as the wife is living with her husband that the assessment is made in his name on the profits of both; when these conditions have ceased, the assessment in respect of the wife's profits is made upon her, and the amount of her profits is computed as belonging to her alone; thus, the wife is chargeable in the year of assessment in which her husband dies, in respect of income from a source belonging to her (such as

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[44] S. 17, see p. 535.

[44a] See pp. 775—7.

[45] General Rules, r. 15, see p. 489. The question of priority in bankruptcy and winding-up is dealt with pp. 402 *sqq.*

[46] *I. R.* v. *Oban Distillery Co., Ltd.*, 1933 S. C. 44; the payments were similar to those considered in *Dailuaine Talisker Distilleries, Ltd.* v. *I. R.*, see p. 101.

[47] Act of 1944, s. 42 and 4th Sched., Parts I, IV, these provisions are set out at pp. 690—694, they are very explicit and to summarise them would be superfluous. They relate back to 1939—40, and even to earlier years. 4th Sched., paras. 13, 6 (1).

[48] S. 237, see p. 453.

[49] See p. 289.

[50] General Rules, r. 16, proviso (1), see p. 489, *Bowers* v. *Harding*, [1891] 1 Q. B. 560, see p. 250. ROWLATT, J., in *Purdie* v. *R.*, [1914] 3 K. B. 112, at 117, points out the danger of treating this proviso as if it were "a substantive enactment"; but it is the sole foundation for the practice of aggregating the incomes of a husband and wife, which brings in a great sum to the State every year; see *per* PETERSON, J., in *In re Ward*, [1922] 1 Ch. 517, at 520.

[51] *In re Ward*, above; but it is doubtful whether an assessment can be made upon him after her death in one year of assessment, in respect of the joint income of the previous year; see the two following notes.

War Loan Stock) which is computed according to the profits of the preceding year.[52] Conversely, the husband is chargeable, in a year of assessment immediately following the marriage, in respect of income from the wife's foreign possessions computed according to the profits of the preceding year.[53] While the wife is living with her husband, the tax is calculated upon the joint income; but relief is given in respect of £180, together with a limited deduction if the wife has an earned income.[54]

A married woman may be "living with her husband" though they are actually in different places for reasons of public duty, or of business, or even of pleasure; conversely, she may not be "living with" him, if they no longer have a common home, although there is no legal separation,[55] or although they are merely residing in different places for reasons of health.[56] But if she is "living with her husband" and remains longer in this country in each year than he stays here, that fact does not render her separately assessable;[57] and the husband, even if he is not resident in the year, may be assessed in respect of his wife's income.[58]

A married woman, not living with her husband, who acts as a sole trader, or is entitled to any property or profits for her separate use, is assessable in her own name as if she were not married;[59] the fact that her husband is resident abroad will not free her from liability in respect of income from foreign possessions or securities.[60] If, however, she lives in the United Kingdom, and receives from her husband or through him, or from his property, or on his credit, any allowance or remittance from property outside the United Kingdom she is to be assessed in respect of that allowance or remittance as agent of her husband.[61]

Where the married woman is living with her husband, the right to deduct tax against a payment of dividend by a company, and apparently against any other payment against which tax

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[52] *Leitch* v. *Emmott*, [1929] 2 K. B. 236; see p. 212, see also *per* SANKEY, L.J., at 248. Cf. *Coudray* v. *I. R.*, p. 249, *Palmer* v. *Cattermole*, see p. 277

[53] *Elmhirst* v. *I. R.*, [1937] 2 K. B. 251, applying *Leitch* v. *Emmott*, above; it makes no difference that the wife was not chargeable at all, when single.

[54] Finance Act, 1920, s. 18; Act of 1927, s. 40 (1); Act of 1941, s. 6 (3); see p. 10.

[55] *Eadie* v. *I. R.*, [1924] 2 K. B. 196.

[56] *Derry* v. *I. R.*, 1927 S. C. 714; 13 Tax C. 20

[57] *Browning* v. *Duckworth*, [1935] 1 K. B. 605.

[58] *Duckworth* v. *Lowe*, [1937] 2 K. B. 560.

[59] R. 16, substantive part read with proviso (1); *Leitch* v. *Emmott*, above.

[60] *Derry* v. *I. R.*, above; see Chap. 9.

[61] R. 16, proviso (2), the rest of this proviso seems to have little effect apart from the substantive rule (*see per* Lord BLACKBURN in *Derry* v. *I. R.*, above); a "temporary" absence of the husband (*e.g.*, on active service) does not allow the wife to be separately assessed for remittances from property outside the United Kingdom to which she is entitled in her own right: *Nugent-Head* v. *Jacob* (1945), 62 T. L. R. 67; nor in respect of reliefs, it would seem.

is deductible,[62] applies in her case[63] exactly as it does in that of any other person (including a married woman living separately).

A husband or wife may claim to be assessed separately;[64] but as a separate assessment does not in general make the parties liable to pay less tax than if they are assessed together,[65] this privilege is of little value except for convenience in accounting and so forth; but at any rate it may, if utilised, prevent the husband from being made liable to pay tax upon the wife's income after her death.[66]

The application for separate assessment for any year must be made within six months before July 6 in that year;[67] returns for the purpose may, however, be required at any time.[68] In such a case, claims for allowances and reliefs, including that which relates to insurance and similar payments,[69] may be made as if the parties were not married;[70] but the result will merely be to distribute the amount of the allowance, etc., between husband and wife; and the total amount allowed or repaid is not to exceed what it would have been if no such application had been made: relief for life assurance and deferred annuity payments is credited to the party who made them, and that in respect of a dependent relative or child to the party who maintains them.[71]

Marriage does not defeat the right to relief in respect of earned income, nor the substituted relief given to elderly persons,[72] but the earned incomes of husband and wife living together are aggregated for the purpose of ascertaining the amount of either deduction; an additional deduction is, however, made of nine-tenths of the wife's earned income up to a maximum of £80.[73]

A decree of nullity on the ground of incapacity does not affect the applicability of the above provisions during the period before the decree was made absolute.[74]

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[62] As to deduction at the source generally, see pp. 43, 52, 185, 260 *sqq.*

[63] *Purdee* v *R.*, [1914] 3 K. B. 112.

[64] General Rules, r. 17, see p. 489. As to surtax, see p. 348.

[65] Finance Act, 1920, s. 25 (1) (b), (c), as amended, see p. 467; and see Chap. 1.

[66] As was the case in *Re Ward*, see p. 273, see, however, *I. R.* v. *Portman*, p. 317.

[67] General Rules, r. 17 (1), see p. 489. After application is made, the assessments will continue to be made separately until the application is withdrawn by notice: Act of 1930, s. 22 (1) (a), (2). The notice of withdrawal must be given within six months before July 6 in the year to which it applies, and will then be operative until a fresh application is made for joint assessment: sub-s. 3.

[68] R. 17 (2); Act of 1920, s. 25 (1) (d), (2), see pp. 488—9.

[69] See pp. 8—18; as to post-war credit, see p. 9, note [69].

[70] Act of 1920, s. 25 (1) (a).

[71] Act of 1920, s. 25 (1) (b), (c), the reliefs and deductions referred to are indicated in Chap. 1.

[72] Act of 1918, s. 14 (4); Act of 1925, s. 15 (2); see pp. 12, 13.

[73] Act of 1920, s. 18 (2), as amended, see p. 11.

[74] *Dodsworth* v. *Dale*, [1936] 2 K. B. 503, see p. 372.

Death—An executor or administrator of a deceased person is liable for the tax charged on the deceased,[75] and may deduct all payments of tax out of the assets and effects of the deceased;[76] it may be doubted whether the liability extends beyond the amount of those assets and effects.[77] In addition to this general rule, specific cases arising upon death are provided for as follows:—

Where an owner of lands, etc., who was himself in occupation at the time when an assessment under Schedule A[78] was made, dies before payment of the tax, the heirs, executors, administrators, assigns or other persons who became entitled at the death are made liable for arrears and for the current tax calculated to the time of death, and thereafter to the end of the year without any new assessment.[79] The tax due under Schedule A from an occupier at the time of assessment who was not an owner[80] and that due under Schedule B[81] are not dealt with in this sub-section and are therefore due from executors and administrators only. Any dispute between the executors of a former occupier and his successor in occupation as to the proportion due from each is to be settled by the General Commissioners.[82]

In regard to profits of trade and professions,[83] the executors and administrators are made liable for any tax which becomes payable for any year of assessment by reason of the discontinuance of the trade, etc.,[84] or by reason of a change of partnership or a succession,[85] or of an alteration in the accounting period;[86] the notice requiring a change of partnership to be treated as a discontinuance may be given by the legal representatives of the deceased.[87] The personal representatives of an employer are liable to make returns and so on, and to deduct and pay over tax in connection with the emoluments of his employees.[88]

Executors and administrators are made liable for any tax which becomes payable for any year of assessment by reason

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[75] S. 161 (1), see p. 437; see also as to Collection and Recovery, p. 399, and cf. *Smith* v *Williams*, [1922] 1 K. B. 158, p. 385.

[76] S. 161 (2).

[77] Cf. the observations of PHILLIMORE, L.J., in *R.* v. *Newmarket Commrs., Ex p. Huxley*, see p. 270. See also the Trustee Act, 1925 (15 Geo. 5, c. 19), s. 27 (1); the provisions of that Act bind the Crown: s. 71 (4). The question of priority in the case of an insolvent estate is one of collection, and is dealt with p. 402.

[78] See Chap. 2, especially pp. 38—41.

[79] S. 161 (3).

[80] See Chap. 2.

[81] See Chap. 3.

[82] General Rules, r. 22, see p. 40.

[83] Chaps. 5 and 6.

[84] Act of 1926, s. 31 (2), (7, p. 146.

[85] Sched. D, Cases I and II, r. 11 (3), as amended; see p. 148.

[86] Act of 1926, s. 24 (4), see p. 142. this provision applies also where profits of agriculture or woodlands are assessed under Sched. B.

[87] R. 11 (4), proviso, see p. 148.

[88] Employments Regulations, 1944, reg. 33, p. 765; see pp. 251—4.

of the cesser of any source, or part of any source, the income of which is chargeable under Case III, Case IV or Case V of Schedule D.[89]

Where the deceased received emoluments connected with the Armed Forces, his personal representatives are liable for any tax payable for any year of assessment;[90] this includes tax charged in respect of a sum which became payable on the termination of his service, and was therefore paid on his death.[91]

If a statement of all the profits (chargeable under whatever Schedule) has not been made before the death, an assessment may be made upon the executors or administrators in respect of all the profits which arose or accrued to the deceased before his death,[92] except, of course, profits taxed at the source by way of deduction.[93] The tax assessed is payable out of the estate.[92] Executors' liabilities under this rule may include those which arise under retrospective provisions such as have been enacted in recent Finance Acts.[94]

Although assessments, additional assessments and surcharges may now be amended or made within six years after the end of the year of assessment to which they relate,[95] in the case of a deceased person the time so allowed does not extend beyond the third year following the year of assessment in which he died.[96]

The provisions imposing an obligation to make returns on the representatives of deceased persons, for income tax proper and for surtax, are indicated in Chapter 15.

Executors (or administrators) are not entitled to reliefs in respect of dividends or interest apportioned up to the date of death and received by them as representatives of the deceased;[97] nor to exemption because the deceased was non-resident.[98] Subject to the claim being made in time,[99] they may of course obtain any relief which was due to the deceased in his lifetime.

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[89] Act of 1926, s. 30, proviso (i), read with s. 31 (2), see Chaps. 8 and 9.

[90] Act of 1927, s. 45 (6), see p. 546; Sched. E, r. 2, see p. 484, see also p. 254.

[91] *Allen* v. *Trehearne*, [1938] 2 K. B. 464.

[92] General Rules, r. 18, see p. 490. The tax is so payable also in the cases referred to in notes [88]—[91]. The rule applies so as to make the husband's executrix chargeable in respect of profits of the wife where he would have been so chargeable in his lifetime; these profits in the year in which he died may be apportioned for the purpose to the date of death. *Palmer* v. *Cattermole*, [1938] 2 K. B. 561; see p. 274.

[93] To assess the executors separately on such profits would be to tax these twice over.

[94] *Cottingham's Executors* v. *I. R.*, [1939] 1 K. B. 260; see pp. 66, 67.

[95] Act of 1923, s. 29 (1), see p. 521.

[96] Act of 1923, s. 29 (3). These provisions overlap to some extent with General Rule 18 (cited above); if there is any contradiction between them, it is submitted that the later enactments in s. 29 prevail.

[97] *I. R.* v. *Henderson's Executors*, 1931 S. C. 687, 16 Tax C. 282; applied to an annuity, *Bryan* v. *Cassin*, [1942] 2 All E. R. 262. See also *Ryden's Executors* v. *I. R.* (1934), 19 Tax C. 474.

[98] *Wood* v. *Owen*, [1941] 1 K. B. 92.

[99] See Chap. 18, pp. 391—394.

but was not in fact allowed. Executors may be liable under a contract made by the deceased for a compromise of penalties incurred.[1]

The death of a person whose income is affected by the law relating to trading with the enemy is dealt with by the Act of 1944.[2]

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[1] *Att.-Gen.* v. *Midland Bank Executor and Trustee Co., Ltd.* (1934), 19 Tax C. 136; see p. 360.

[2] Fourth Schedule., Part I, para. 7, see p. 692

CHAPTER 13

EXEMPTIONS AND ABATEMENTS IN FAVOUR OF CHARITABLE AND OTHER BODIES

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Introductory—Of the exemptions and allowances provided in favour of "charitable" bodies, and of public institutions and societies of various kinds, the most important are those which affect "charities" and "trustees for charitable purposes." These and similar phrases are used in a legal sense, which is different from their ordinary or colloquial meaning,[1] and is wide enough to include some, if not all, of the institutions and societies to which specific exemptions or allowances are given. Again, in practice, some of these specific provisions appear to confer a relief very similar to that which is given by the corresponding general provisions.[2] Consequently, it has been thought convenient in this chapter first to deal with those provisions which affect charities generally, and afterwards to deal in turn with those which affect particular bodies.

Stated shortly, then, the general exemptions apply:—

(1) To tax in respect of lands owned and occupied by "a charity."[3]

(2) To tax in respect of the rents and profits of lands owned, but not occupied, by "trustees for charitable purposes."[4]

(3) To tax in respect of lands occupied by "a charity."[5]

(4) To tax in respect of dividends, etc., forming part of the income of a "body or trust established for charitable purposes only."[6]

(5) To tax in respect of any yearly interest or other annual payment forming part of such income.[6]

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[1] *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, see p. 280.

[2] See p. 283.

[3] Finance Act, 1921, s. 30 (1) (a), see p. 505; and see Chap. 2.

[4] Income Tax Act, 1918, s. 37 (1) (a), see p. 414; Act of 1926, s. 28, proviso, see p. 529. See also Chap 2; and as to the properties transferred from No. II and No. III of Sched. A, see Chaps. 5 and 8.

[5] Act of 1921, s 30 (1) (b); thus applies to Sched B, see Chap. 3.

[6] Act of 1918, s. 37 (1) (b); see Chaps. 4, 8.

(6) To tax in respect of the profits of a trade carried on by "any charity," subject to certain conditions.[7]

"Charity": "Trustees for Charitable Purposes"—The difference in nomenclature appearing in the provisions just summarised does not denote any distinction in sense. The expression "any body of persons or trust established for charitable purposes only" appears in section 37 (1) (b) of the Income Tax Act, 1918,[8] in connection with exemption under Schedules C and D; the expression used in section 37 (1) (a) in connection with Schedule A is "trustees for charitable purposes,"[8] and bears the same meaning as the former.[9] In section 30 of the Finance Act, 1921, in connection with Schedules A, B and D, the expression "charity" is used, but is defined in the terms quoted from section 37 (1) (b) of the Act of 1918.[10] In each of these enactments, and throughout the Income Tax Acts, the expression "charitable purposes" bears the same meaning as in the general law of England.[11] But if the purpose of the trust is to be found in a Scottish deed, the effect of the deed must be ascertained according to the law of Scotland in order to determine whether that purpose comes within the definition of charity; and in such a deed the phrase "charitable or benevolent purposes" means no more than "charitable purposes" in an English deed.[12]

The following passage contains the accepted definition:-

"'Charity' in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity must do either directly or indirectly."[13]

The fact that some benefit may accrue to the members of a society, as such, is not sufficient, taken by itself, to prevent that society from being a charity established for charitable

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[7] Act of 1921, s. 30 (1) (c), as extended by Act of 1927, s. 24, see p. 505, and see Chap. 6.

[8] See p. 414, and see note [6], above. In *I. R.* v. *Hull* (1937), 21 Tax C. 374, it was held that "established" means "established in the United Kingdom"; but it was unnecessary to decide the point, for on the facts the trust was held to be established here, the decision is therefore not binding, and appears to be doubtful.

[9] *R.* v. *Special Commrs., Ex p. University College of North Wales* (1909), 5 Tax C. 408.

[10] Act of 1921, s. 30 (3), see p. 505.

[11] *Special Commrs* v. *Pemsel*, [1891] A. C. 531. Cf. also *I. R.* v. *Scott*, [1892] 2 Q. B. 152.

[12] *Jackson's Trustees* v. *L.-A.*, 1926 S. C. 579, 10 Tax C. 460, see p. 282.

[13] *Per* Lord MACNAGHTEN in *Pemsel's Case*, [1891] A. C. at 583.

purposes only.[14] Accordingly, the following bodies or trusts have been held, or admitted, to be qualified for exemption:—Trustees for purposes of maintaining the missionary establishments among the heathen nations of the Moravian Church;[15] a university college;[16] societies for the promotion of agriculture;[17] a technical college set up to promote the efficiency of the woollen industry;[18] a fund to stimulate public interest in music;[19] religious and educational associations, and a company, one of whose objects was to provide accommodation for those associations, without profit;[20] a trust for amenity purposes in a burgh.[21] On the other hand, a trust whose purpose is to secure a certain line of legislation is not a charitable trust;[22] nor a trust to bring about simplified spelling;[23] nor a trust for acquiring land in Palestine to settle Jews thereon;[24] nor a trust for encouraging intercourse with a foreign country;[25] nor a flying club company;[26] nor a company for improving the breed of foxhounds;[27] nor the Corporation of Foreign Bondholders.[28] Such bodies as the General Medical Council,[29] the General Nursing Council for Scotland,[30] the Geologists' Association,[31] the Headmasters' Conference,[32] and the Honourable Company of Master Mariners,[33] which include among their objects the securing of professional advantages as well as educational or scientific purposes, are not entitled to exemption. On the other hand, the Institution of Civil Engineers was

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[14] *I. R.* v. *Yorks. Agricultural Soc.*, [1928] 1 K. B. 611; *I. R.* v. *Peebleshire Nursing Assn.*, 1927 S. C. 215, see p. 282. But if the members have a right to dividends, there is not such a charity: *Hugh's Settlement, Ltd.* v. *I. R.* (1938), 22 Tax C. 281; nor where one purpose is for a social meeting place: *Williams' Trusts* v. *I. R.*, [1945] 2 All E. R. 236.

[15] *Special Commrs.* v. *Pemsel*, above.

[16] *Ex p. University College of North Wales*, above. It will be seen (see p. 285, note [72]) that the University College succeeded in being treated not only as a "college" but also as "trustees," etc.

[17] *Royal Agricultural Soc.* v. *Wilson* (1924), 40 T. L. R. 763, see Act of 1924, s. 23, p. 290; *I. R.* v. *Yorks Agricultural Soc.*, above.

[18] *Scottish Woollen Technical College* v. *I. R.*, 1926 S. C. 934; 11 Tax C. 139.

[19] *I. R.* v. *Glasgow Musical Festival Assn.*, 1926 S. C. 920; 11 Tax C. 154; *Royal Choral Soc.* v. *I. R.*, [1943] 1 All E. R. 101 (C. A.).

[20] *R.* v. *Special Commrs., Ex p. Essex Hall*, [1911] 2 K. B. 434; see p. 283.

[21] *I. R.* v. *Tayport T. C.* (1936) 15 A. T. C. 55.

[22] *I. R.* v. *Temperance Council* 1926, 136 L. T. 27, followed in *Bonar Law Memorial Trust* v. *I. R.* (1933), 49 T. L. R. 226. Nor a trust for resisting strikes and lock-outs: *Trustees for Voluntary Workers* v. *I. R.*, 1942 S. C. 47.

[23] *Hunter's Trustees* v. *I. R.* (1929), 45 T. L. R. 344.

[24] *Keren Kayemeth, Ltd.* v. *I. R.*, [1932] A. C. 650.

[25] *Anglo-Swedish Soc.* v. *I. R.* (1931), 16 Tax C. 34.

[26] *Scottish Flying Club Co., Ltd.* v. *I. R.*, 1935 S. C. 817, 20 Tax C. 1.

[27] *Peterborough Royal Foxhound Show Soc.* v. *I. R.*, [1936] 2 K. B. 497, see p. 290. See also *Wernher's Trust* v. *I. R.*, p. 285.

[28] *Corpn. of Foreign Bondholders* v. *I. R.*, [1944] 1 K. B. 403 (C. A.).

[29] *General Medical Council* v. *I. R.*, [1928] W. N. 98; 97 L. J. K. B. 578; see also *I. R.* v. *Aberdeen Medico-Chirurgical Soc.*, 1931 S. C. 625; 16 Tax C. 237, see p. 287.

[30] *General Nursing Council for Scotland* v. *I. R.*, 1929 S. C. 664; 14 Tax C. 645.

[31] *Geologists' Assn.* v. *I. R.* (1928), 7 A. T. C. 442. See also *Midland Counties Instn. of Engineers* v. *I. R.*, *ibid.* 448.

[32] *R.* v. *Special Commrs.* (1925), 41 T. L. R. 651.

[33] *Master Mariners' Company* v. *I. R.* (1932), 17 Tax C. 298.

found to be established solely for the advancement of science and was held to be a charity.[34] The Anti-Vivisection Society was not.[34a]

Another group, whose claims have been allowed, includes societies for the relief of the indigent among their own subscribers and their widows and children, where the relief cannot be claimed as a right;[35] a trust for relieving poverty, for securing medical comforts, and for advancing education among tea planters and their families;[36] a trust to set up a seaside boarding-house at reduced charges for members of the drapery and other trades;[37] a trust for providing a temperance hotel;[38] and an association to provide nursing at less than cost price, although in this case subscribers paid lower charges than non-subscribers.[39] So a convalescent home belonging to a friendly society, and serving its members only, who are put to no expense when they use it, is none the less a "hospital."[40]

A trust for the benefit of such persons, institutions or purposes as the settlor shall appoint, or in default of appointment for a specific purpose which is (*prima facie*) a charitable purpose, is not a trust for charitable purposes only, until the power is exercised in favour of a charitable purpose.[41]

If a testator bequeaths to trustees for, or to a body of persons established for, charitable purposes, an interest in residue (whether limited or absolute), the provisions of Part III of the Act of 1938 will apply so that the income there dealt with is treated during the period of administration as income of those persons;[42] it will depend upon the enactments considered in the present chapter whether they obtain exemption or not, in respect of that income. Similarly the provisions as to settlement contained in Part IV[43] may affect such trustees, or such a body; and where they are the trustees of a settlement, a specific provision is directed to the calculation of the income "deemed not to have been distributed" in their case.

The question whether a body is established for charitable purposes is a question of law.[44]

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[34] *Inst. of Civil Engineers* v. *I. R.*, [1932] 1 K. B. 149.

[34a] *I. R.* v. *N. A. V. S.* (1945), 62 T. L. R. 136.

[35] *I. R.* v. *Medical and Charitable Soc.*; *I. R.* v. *Medical Men's Widows', etc. Soc.* (1926) 42 T. L. R. 612. [36] *Jackson's Trustees* v. *I.-A.*, see p. 280.

[37] *I. R.* v. *Roberts' Marine Mansions Trustees* (1927), 43 T. L. R. 270.

[38] *I. R.* v. *Falkirk Temperance Café Trust*, 1927 S. C. 261, 11 Tax C. 353.

[39] *I. R.* v. *Perthshire Nursing Assn.*, 1927 S. C. 215, 11 Tax C. 335.

[40] *R. A. Order of Buffaloes* v. *Owens*, [1928] 1 K. B. 446, the decision was given under Sched. A, No. VI, r. 1 (c) (see p. 286), but would also be applicable under s. 37 (1) (a) of the Act of 1918, see p. 414.

[41] *R.* v. *Special Commrs., Ex p. Hawk's Trustees* (1922), 91 L. J. K. B. 662; 8 Tax C. 286, *after* such exercise of the power, the trust becomes one for charitable purposes only: *Jackson's Trustees* v. *I.-A.*, above.

[42] See pp. 325–327 and note [93] on p. 325. s. 20 of the Act of 1922 is repealed by Act of 1936, ss. 37 (2), 55 (7) and Fifth Sched.

[43] See pp. 316–321 and s. 41 (4) (d) (iii), p. 618.

[44] *Royal Choral Soc.* v. *I. R.*, [1943] 2 All E. R. 101 (C. A.).

Lands Owned and Occupied by Charities—In general, "charities" are entitled to exemption from tax under Schedule A in respect of lands owned and occupied by them,[45] with the exception of any part which is in the use or enjoyment of a person whose total annual income from all sources[46] amounts to not less than £150.[47] If the charity has to pay a "rent" or other annual payment in respect of such lands, that rent or payment is not within the exemption; and it must deduct tax in making the payment, and account for the tax to the Crown.[48]

This provision does not apply to such lands as are mentioned in No. VI[49] of Schedule A, that is, to certain lands belonging to colleges or halls in universities, hospitals, public schools or almshouses, and literary or scientific institutions. It appears to follow that lands (if there be such) owned and occupied by any of these specified bodies but not described in No. VI are within the scope of the exemption created by section 30 (1) (a) of the Act of 1921. Any "charity" which is comparable to those specified in No. VI (*e.g.*, a school which is not a "public school") is entitled to that exemption in respect of all lands owned and occupied by it, without regard to No. VI.[50]

If a charity "owns and occupies" any lands or hereditaments which were formerly grouped under No. III or No. II of Schedule A,[51] but are now transferred to Schedule D, this exemption still applies, in spite of the transfer.[52]

The exemption must be claimed from the revenue authorities in the prescribed form; if the claim is refused, an appeal may be brought to the Special Commissioners.[53]

Rents and Profits of Lands Owned but not Occupied—"Trustees for charitable purposes" enjoy an exemption from tax under Schedule A in respect of the rents and profits of any lands vested in them, so far as those rents and profits are applied to "charitable purposes" only.[54] Although hospitals, public schools, and almshouses are also specifically mentioned in this connection, that mention does not cut down the meaning of the phrase "trustees for charitable purposes," and the authority

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[45] Act of 1921, s. 30 (1) (a), see p. 505.

[46] See Chap. 14.

[47] S. 30 (2).

[48] S. 30 (2) must now be read with s. 17 of the Act of 1940 and r. 21 of the General Rules, see p. 52.

[49] See p. 461. The "allowances" conferred by No. VI of Sched. A are discussed p. 286.

[50] *Scottish Woollen Technical College* v. *I. R.*, 1926 S. C. 934; 11 Tax C. 139, see p. 281.

[51] See Chap. 6, p. 136; Chap. 8, p. 179.

[52] Act of 1926, s. 28, proviso, see p. 529.

[53] Act of 1925, s. 19 (1) (a), see p. 526, notice of appeal must be given within twenty-one days of the notice of decision on the claim: s. 19 (2). As to appeals, see p. 380.

[54] Act of 1918, s. 37 (1) (a), see p. 414; this provision does not extend to lands occupied by the charity: *Maughan* v. *Free Church of Scotland* (1893), 3 Tax C. 207; *Re p. Essex Hall*, [1911] 2 K. B. 424, see p. 281, but these are now provided for: see above.

of a university college is not prevented from enjoying this exemption.[55]

The lands are to be assessed in the ordinary course in spite of the exemption;[56] the tax will be deducted by the tenants in paying rent:[57] and repayment is obtainable by a claim made in the prescribed form: against the refusal of a claim an appeal may be brought to the Special Commissioners.[58]

The exemption applies where tax is deducted from the rent or royalties payable in respect of a quarry, mine, or other concern transferred from No. III of Schedule A to Schedule D; and also where any of the miscellaneous profits formerly grouped under No. II are received by such bodies as are above indicated.[59] It is specifically preserved in relation to rents under "long leases" and other annual sums covered by section 17 of the Act of 1940,[60] and the additional charges imposed by sections 15 and 16 in the case of "short leases" appear to be rendered inapplicable by the language of section 13.[61]

Lands Occupied by Charities.—A charity is exempt from income tax under Schedule B[62] in respect of lands occupied by it.[63] But the exemption does not apply in the case of lands occupied for the purpose of husbandry only, unless the work is mainly carried on by beneficiaries of the charity and the profits (if any) are applied solely for the purpose of the charity.[64] The exemption does not extend to any parts of the lands (for whatever purpose occupied) which are in the use and enjoyment of a person whose total income from all sources[65] amounts to not less than £150.[66]

Dividends, Interest, Annual Payments.—Exemptions are created in respect of any interest, dividends, etc., taxable under Schedule C[67] and of any "yearly interest or other annual

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[55] *R. v. Special Commrs., Ex p. University College of North Wales* (1909), 5 Tax C 408, see p. 240.

[56] S. 27 (1) (a), proviso. [57] See pp. 43, 46, 52

[58] Act of 1925, s. 19 (1) (a), see p. 526. notice of appeal must be given within twenty-one days of the notice of the decision. s. 19 (2). The claim itself must be made within six years after the end of the year of assessment to which it relates. Act of 1918, s. 41, as amended by Act of 1923, s. 30 (1), see p. 416.

[59] Act of 1926, s. 28, proviso, see Chap. 6, p. 136; Chap. 8, p. 179.

[60] See p. 52, see also sub-s. 4, p. 629.

[61] The words in s. 13 (1) (p. 635), which confine the operation of the succeeding sections to "land chargeable to tax under Schedule A" appear to affect this purpose, though perhaps not very aptly. [62] See Chap. 3, pp. 54, 55

[63] Act of 1921, s. 30 (1) (b), see p. 507. The claim must be made as prescribed: see p. 283, note [52]. It is immaterial who is the owner.

[64] S. 20 (1) (b), proviso. As to the meaning of "husbandry," see p. 56; but note that this proviso deals with lands occupied for husbandry only. See also pp. 55, 58.

[65] See Chap. 14.

[66] S. 20 (2); the exception with regard "to any rent payable or other annual payment to be made by any charity" is applied in terms to the exemption granted by s. 20 (1) (b), but it is difficult to see what effect it can have in connection with Sched. B. [67] See Chap. 4.

payment" taxable under Schedule D,[68] provided that these form "part of the income of any body of persons[69] or trust established for charitable purposes only," or are prevented by rules or regulations under an Act of Parliament, charter, decree, deed of trust, or will from being applied to any purpose other than charitable; and so far as they are applied to charitable purposes only.[70] The meaning of "charitable purposes" has already been indicated.[71] The exemption above described applies in favour of the authority of a college in a university, as it does to any other such body.[72]

The presence of the words "yearly interest" in the provision last cited does not restrict the meaning of "annual payment";[73] the profits of a trade carried on by trustees who hand them over each year to another trust which is established for charitable purposes only, may be an annual payment, and the charitable trust is entitled to repayment of the income tax which has been paid by the trading trustees out of the profits before handing over the balance.[74] But the profits of a trade carried on by the charitable body itself are not an "annual payment."[74] Copyright royalties, though subject to a deduction for expenses, may be an "annual payment."[75]

There is a provision in Schedule C against deduction of tax under the rules as to dividends payable by the Bank of England where a certificate has been given to the Bank under section 28 of the Charitable Trusts (Amendment) Act, 1855.[76]

Profits of Trade : Schedule D--The profits of a trade carried on by a charity itself are exempt (i) if the trade is exercised in the course of the actual carrying out of a primary purpose of the charity, or (ii) if the work in connection with the trade is mainly carried on by beneficiaries of the charity; in either

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[68] The meaning of these terms is discussed pp. 186 *sqq.* Interest on daily balances at a bank is not yearly interest within the meaning of the exemption *Garston Overseers v. Carlisle*, [1915] 3 K. B. 381, see p. 187.

[69] Defined in s. 237, see p. 452.

[70] S. 37 (1) (b), see p. 414; the syntax of this sub-section is confused, but it is hoped that the paraphrase in the text does not misrepresent its meaning. Money spent by a trust (established for purposes admitted to be charitable) on improving a recreation ground provided for the use of a trading company's employees was held not to have been so applied: *Werther's Trust v. I. R.* (1937), 21 Tax C. 137; see also note [75], below. As to the method and time of claiming repayment, and as to appeal, see p. 283, note [88].

[71] See p. 280.

[72] *Ex p. University College of North Wales*, see p. 281.

[73] *R. v. Special Commrs., Ex p. Shaftesbury Homes*, [1923] 1 K. B. 393, see p. 185. As to payments made by persons carrying on concerns transferred from No. III of Sched. A, see p. 136.

[74] *Brighton College v. Marriott*, [1926] A. C. 192; see below.

[75] *Lawrence v. I. R.* (1940), 23 Tax C. 333; the claim failed, however, because the trust moneys were also applicable to non-charitable purposes. See *Curtis Brown, Ltd. v. Jarvis*, p. 229.

[76] See r. 10 of those rules, p. 470; and see p. 64. The provision does not appear to affect dividends payable out of foreign revenues.

case the profits must be applied solely for the benefit of the charity.[77]

Thus, an asylum or a hospital which takes in paying patients,[78] or a public school which receives payments for the education or board of pupils,[79] are exempt in respect of the profits so made, if these are wholly devoted to the maintenance of the hospital or the school. The exemption in class (i) may also extend to trustees who publish and sell a hymn-book and distribute the proceeds to widows and orphans, and to a society which carries on booksellers' shops in pursuance of its object of diffusing religious literature;[80] but not, it would seem, to a hospital which lets out rooms for entertainments,[81] nor to an institution for religious and social improvement which carries on a restaurant,[82] because the trade can hardly be said to be exercised as described in the section

As regards class (ii), the condition as to the application of profits is probably not satisfied where the individual beneficiaries are allowed to retain for themselves the profits they help to earn. The performers in a musical competition have been held to be "beneficiaries of the charity."[83]

Where a trade of any kind is carried on by separate trustees who hand over the yearly balance of profits to a "body of persons or trust established for charitable purposes only," that body is entitled to repayment.[84]

"Allowances" under Schedule A -The general exemption under Schedule A in respect of lands owned and occupied by a charity *does not extend to lands mentioned in* No. VI.[85] By that group of rules "allowances" are made under Schedule A in favour of colleges and halls in any university, of hospitals, public schools and almshouses, and of literary and scientific institutions.[86] As regards all but the last class, these allowances

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[77] Act of 1921, s. 30 (1) (c), as substituted by Act of 1927, s. 24 (see p. 505), passed after the decision in *Brighton College* v. *Marriott*, below. As to the method of claiming exemption, see p. 283, note [53].

[78] Held taxable in *St Andrew's Hospital, Northampton* v. *Shearsmith* (1887), 19 Q. B. D. 624. *Needham* v. *Bowers* (1888), 21 Q. B. D. 436.

[79] In *Brighton College* v. *Marriott*, [1926] A. C. 192, above.

[80] In *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7; and *Religious Tract and Book Soc.* v. *Forbes*, ibid. 415, see p. 69.

[81] *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1.

[82] *Grove* v. *Young Men's Christian Assn.* (1903), 4 Tax C. 613.

[83] *I. R.* v. *Glasgow Musical Festival Assn.*, 1926 S. C. 920, see p. 231; see also *Convent of the Blessed Sacrament* v. *I. R.* (1933), 18 Tax C. 76.

[84] *R.* v. *Special Commrs., Ex p. Shaftesbury Homes*, [1922] 1 K. B. 393, see p. 286.

[85] Act of 1921, s. 30 (1) (a), see p. 283.

[86] Sched. A, No. VI, see p. 461. As to the meaning in these rules of "college or hall," see *College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162; and cf. *Dunn* v. *Free Church of Scotland* (1897), 3 Tax C. 537; of "hospital," see *Needham* v. *Bowers* (1888), 21 Q. B. D. 436; *Cossa* v. *Nottingham Lunatic Hospital*, [1891] 1 Q. B. 385; *Royal etc. Order of Buffaloes* v. *Owens*, [1928] 1 K. B. 446, see p. 282; and cf. *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624, see above; of "public school," see *Blake* v. *Mayor, etc. of London* (1887), 18 Q. B. D. 437; 19 Q. B. D. 79; *Ackworth School (Governors)* v. *Betts* (1916), 6 Tax C. 642; *Cardonal Vaughan Memorial School*

take the form of a remission of the tax charged on their public buildings and offices (subject to a certain restriction indicated below), and an allowance of the amount expended on repairs of their public buildings and offices (without that restriction) and of gardens, walks and grounds repaired and maintained out of their funds.

In the case of colleges and halls, the tax on any portion of the public buildings and offices occupied by any individual member thereof, or by any person paying rent, and in the case of hospitals, public schools and almshouses, the tax on any portion occupied by any individual officer or the master thereof whose total annual income for income tax purposes is £150 or more, is not remitted.[87] In the former case, the gardens, walks and grounds must be for recreation only; in the latter, for recreation or sustenance.

A hospital authority may, nevertheless, be liable under Schedule D in respect of the profits derived from letting out parts of their premises.[88]

In regard to literary and scientific institutions, there is a remission of the tax charged on any building being the property of such an institution, and used solely for its purposes, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and so far as not occupied by an officer of the institution or by any person paying rent for the same.[89] The word "property" does not here import legal ownership; and a building which is appropriated exclusively to the use of a literary institution and cannot legally be applied to any other purpose is the property of that institution within the meaning of the rule.[90]

A person who is bound by the terms of his employment to reside in a portion of any such building as is referred to in the above rules has been held to occupy that portion within the meaning of those rules.[91] Where a person resides in any

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Ryall (1920), 7 Tax C. 611; *Bain* v *Free Church of Scotland*, above; *Scottish Woollen, etc. College* v. *I. R.*, 1926 S. C. 114, see p. 281; *Birkenhead School* v. *Drury* (1926), 43 T. L. R. 48; *Girls' Public Day School Trust, Ltd.* v. *Ereaut*, [1931] A. C. 12, where the H. L. held that a school may be a "public school" although a profit is earned, which is distributed as a dividend among shareholders; of "almshouses," see *Mary Clark Home (Trustees)* v. *Anderson*, [1904] 2 K. B. 645; of "literary or scientific institution," see *Manchester (Mayor, etc.)* v *McAdam*, [1896] A. C. 500; *Musgrave* v. *Dundee Magistrates* (1897), 34 S. L. R. 702, 3 Tax C. 552; *Sulley* v. *Royal College of Surgeons, Edinburgh* (1892), 19 R. 751; 3 Tax C. 173; *Farmer* v. *Juridical Soc. of Edinburgh*, 1914 S. C. 731; 6 Tax C. 467; *I. R.* v. *Aberdeen Medico-Chirurgical Soc.*, 1931 S. C. 625; 16 Tax C. 237.

[87] No. VI, r. 1 (a)—(d), see p. 461; cf. Act of 1921, s. 30 (2), p. 505. If the school is let to the education authority, no relief is given under this provision (*Bryan* v. *Trustees of Glasgow Arch-Diocese* (1922), 8 Tax C. 276); but s. 37 (1) (a) may apply, in some such cases at any rate: see p. 283.

[88] *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1, see p. 69.

[89] No. VI, r. 1 (e); see *Musgrave* v. *Dundee Magistrates*, above.

[90] *Manchester (Mayor)* v. *McAdam*, [1896] A. C. 500; see *per* Lord HERSCHELL, at 509.

[91] *Sutton's Hospital (Governors)* v. *Elliott*, [1922] 2 K. B. 1; the point had been dealt with to some extent in *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484 (see p. 29); see

portion rent-free, the annual value of that privilege cannot be included in calculating his income for the purposes of the allowance to hospitals, etc.[92]

The above "allowances" are granted by the Additional Commissioners,[93] and may, therefore, be claimed in making returns, and in appeals against assessments.

Churches and Chapels : Schedule C—An exemption is given from tax under Schedule C in respect of any interest, annuities, dividends and shares of annuities payable out of any public revenue,[94] which stand in the names of trustees and are applicable solely towards the repairs of any cathedral, college, church or chapel or any building used solely for divine worship, so far as they are in fact applied to those purposes.[95] Observe in cases not covered by any other provision, that the exemption here referred to does not give relief in respect of interest or other annual payments which are charged under Schedule D.

British Museum—The trustees of the British Museum are exempt from tax under Schedule A in respect of lands and tenements vested in them (whether occupied by them or not);[96] in regard to dividends of stock vested in them or in any other person for their use, they are entitled to the like exemptions as are granted to "charitable institutions."[97]

The exemption under Schedule A may be claimed from the Additional Commissioners; the other exemptions only from the Special Commissioners.[98]

Registered Friendly Societies—A registered friendly society,[99] whatever the amount of its income, which is precluded by Act of Parliament or by its own rules from assuring to any person a gross sum exceeding £300, or an annuity exceeding £52 a year, is entitled to exemption from tax under Schedule A.

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per POLLOCK, B., at 488. But it is difficult to reconcile this passage with the Crown's contention that the justices were in occupation of the whole building, and with the admissions set out in 2 Tax C. 428.

92 No. VI, r. 1 (c). *Cf. Tennant v. Smith*, [1892] A. C. 150, p. 299.

93 No. VI, r. 2, see p. 462; read with Act of 1942, 10th Sched. r. 3, p. 670.

94 See Chap. 4.

95 S. 37 (1) (c). Most cases to which this provision extends are already covered by sub-s. (b), above, for the purposes named are "charitable purposes," see p. 280; but it is possible that interest, etc., though solely applicable to such repairs, may be in the hands of trustees who are not trustees for charitable purposes *only*; *cf. R. v Special Commrs., Ex p Rank's Trustees*, p. 282. As to claiming the exemption, see p. 283, note [52].

96 S. 38, see p. 382. The first portion of this section relating to tax charged under Sched. A is of wider scope than the earlier provision contained in s. 149 of the Act of 1842, as to which see the observations of Lord MACNAGHTEN in *Russell's Case*, [1891] A. C. at 589. See also Act of 1926, s. 23, proviso, p. 273, note [4].

97 S. 38. The latter part of this section is presumably intended to cover the same ground as s. 37 (1) (b), if so, it is unfortunate that the language is different.

98 S. 40, see p. 384; see also proviso to sub-s. 1 and p. 292; and note [52], p. 283.

99 See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8 *sqq.*, 42; 1908 (8 Edw. 7, c. 32), ss. 1, 3.

Schedule C, and Schedule D.[1] The exemption under Schedule A extends to all lands the property in which belongs to the society, whether occupied by it or not; and that under Schedule D to any profits chargeable under that Schedule, including the profits of any trade carried on by the society.[2]

The exemption under Schedule A may be claimed from the Additional Commissioners; those under Schedules C and D only from the Special Commissioners.[3]

Unregistered Friendly Societies—An unregistered friendly society whose income does not exceed £160 is entitled to complete exemption from the income tax, under whatever schedule charged.[4] If its income exceeds that limit, it enjoys no exemption.

The exemption may be claimed in the same manner as that of a registered friendly society.[5]

Savings Banks—A savings bank which is certified under the Savings Bank Act, 1863,[6] is entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners.[7] The tax on such interest and dividends may be deducted at the source:[8] where this has been done, repayment may be claimed from the Special Commissioners.[9]

Apart from the above, every savings bank is entitled to exemption from tax under Schedules C and D, so far as its income is applied in the payment or credit of interest to any depositor,[10] provided that it makes certain returns before May 1 in the year after that for which exemption is claimed.[11] The depositor is, however, taxable for interest (of whatever amount) paid or credited to him.[12] The claim must be made to the Special Commissioners.[13]

Savings banks are also entitled to a certain relief in respect of expenses of management.[14]

Trade Unions—A registered trade union[15] which is precluded by Act of Parliament or by its own rules from assuring to any

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[1] Income Tax Act, 1918, s. 39 (1), see p. 415.
[2] The transfer to Sched. D of profits from mines, quarries and other concerns formerly grouped under No. III of Sched. A, or from the sources included in No. II, does not affect the right of exemption: Act of 1926, s. 28, proviso; see Chaps. 5, 8.
[3] S. 40; see proviso to sub-s. 1, p. 384; and see p. 292, and note [13] p. 293.
[4] S. 39 (1), see p. 415; and see note [1]. [5] Above.
[6] 26 & 27 Vict. c. 87; see ss. 3, 4.
[7] See p. 64.
[8] Income Tax Act, 1918, s. 39 (3) (a); see p. 415. [9] S. 39 (3) (b).
[10] S. 40; see p. 292.
[11] *Ibid.*, proviso (ii), as amended by Act of 1924, s. 24.
[12] *Ibid.*, proviso (i); the tax is charged under Case III of Sched. D, r. 1 (e), see p. 212.
[13] S. 40, see p. 292.
[14] S. 33, see p. 213.
[15] See Trade Union Acts, 1871 (34 & 35 Vict. c. 31), ss. 13 *sqq.*; 1876 (39 & 40 Vict. c. 22), ss. 6, 8; 1913 (2 & 3 Geo. 5, c. 30), s. 7.

person a gross sum exceeding £300, or an annuity of £52 a year is entitled to certain exemptions from tax under Schedules A, C and D. These exemptions extend only to interest and dividends which are in law applicable, and which are in fact applied, solely for the purpose of provident benefits.[16] The reference to interest or dividends in connection with Schedule A appears to apply to interest on mortgages of lands, etc.,[17] and to interest or dividends receivable in respect of shares in concerns formerly assessed under No. III;[18] income tax in both cases being paid in the first instance by the occupier, or the person carrying on the concern, and charged on the recipient by way of deduction.[18]

These exemptions can be claimed only from the Special Commissioners.[19]

There is no exemption for unregistered trade unions.

Agricultural, etc., Shows—The profits arising to a society or institution for promoting the interests of agriculture, horticulture, live-stock, breeding[20] or forestry from an exhibition or show held for the purposes of the society are exempt, if applied solely to those purposes.[21]

National Insurance Funds—In addition to any other rights of exemption that they may possess, the following bodies are entitled to exemption from tax charged under any Schedule in respect of all income derived from the sources mentioned in connection with them:— [22]

"Approved societies" and their branches under the National Health Insurance Act, 1924:[23] the society's funds or credits under that Part and any investment thereof;

The Insurance Commissioners[24] (for England, Scotland, Wales and Northern Ireland): any funds held, controlled or managed by them under or for the purposes of that Act;

Insurance Committees established under that Act: the Committee's funds or credits under the National Health Insurance Act, 1924;

The trustees of the special fund constituted for the Mercantile Marine under that Act:[25] the special fund;

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[16] Income Tax Act, 1918, s. 39 (2), see p. 415; "provident benefits" includes the payments therein specified.

[17] See Chap. 2, p. 52.

[18] The right to exemption is unaffected by the transfer to Sched. D: Act of 1936, s. 28, proviso, see Chap. 5.

[19] S. 40; see p. 292.

[20] This includes the breeding of foxhounds: *Peterborough Royal Foxhound Show Soc. v. I. R.*, [1936] 2 K. B. 497; and even of cage-birds: *I. R. v. City of Glasgow Ornithological Assn.* (1938), 21 Tax C. 448.

[21] Act of 1924, s. 23, passed in consequence of the decision in *Royal Agricultural Soc. v. Wilson*, see p. 287.

[22] Act of 1918, s. 39 (5), (6), see p. 416.

[23] 14 & 15 Geo. 5, c. 38.

[24] See the sub-section substituted for sub-s. 6 of s. 43 of the Act of 1911 by s. 64 (2) of the Act of 1924.

The National Health Insurance Joint Committee: any funds held, controlled, or managed by them under or for the purpose of that Act.

These exemptions are to be claimed from the Special Commissioners.[25]

Unemployment Insurance Schemes—The body charged with the administration of any special scheme or supplementary scheme under the Unemployment Insurance Act, 1920,[27] is exempt from income tax in respect of all income receivable by the body from any source whatsoever for the purposes of the scheme; the exemption is to be claimed from the Special Commissioners.[28]

Superannuation Funds—Income derived from investments or deposits of a superannuation fund is exempt from income tax under any Schedule.[29] In order that the benefit of this concession be obtained, the superannuation fund must be approved by the Commissioners of Inland Revenue.[30] To secure such approval certain conditions must absolutely be fulfilled, and certain others must be fulfilled unless the Commissioners think fit to dispense with them, upon terms or otherwise. The essential conditions are these: first, the fund must be *bona fide* established under irrevocable trusts[31] in connection with some trade or undertaking; secondly, the fund must have for its purpose the provision of annuities for persons employed in the trade or undertaking on retirement at a specific age or on earlier incapacity, or the provision of annuities for widows, children or dependants on the death of persons who are or have been so employed, or the provision of both kinds of annuities; the provision of annuities of one or both of these classes must be the sole purpose, or the Commissioners will have a discretion; thirdly, the employer must be a contributor; fourthly, the fund must be "recognised by the employer and employed persons in the trade or undertaking." Note the use in these conditions of the word "undertaking," which is presumably introduced so as to include employers of all kinds, and not merely those carrying on trades or businesses the profits of which are assessable under Schedule D.

The conditions upon which the Commissioners may insist or not, at their discretion, are these:—first, that the rules of the fund shall not provide for the return of contributions in any

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[25] Income Tax Act, 1918, s. 40, see p. 414.
[27] 10 & 11 Geo. 5, c. 30, see ss. 18, 20.
[28] Finance Act, 1921, s. 33, see p. 507, and see p. 292.
[29] *Ibid.* s. 32 (1), see p. 506
[30] *Ibid.* s. 32 (3), as amended by Finance Act, 1930, s. 19.
[31] Difficulties due to the rule against perpetuities may be removed by registration under the Superannuation, etc. Funds (Validation) Act, 1927 (17 & 18 Geo. 5, c. 41), ss. 1, 2.

contingency; secondly, that the provision of annuities of either of the classes described, or of both those classes, shall be the sole purpose of the fund, so long as it is the main purpose—the Commissioners would appear, for instance, to have a discretion to approve funds which provide for the payment of benefits in lump sums on retirement or death; thirdly, that the trade or undertaking is carried on wholly in the United Kingdom, provided that it is carried on partly in this country; and fourthly, that the person who carries it on is residing in the United Kingdom.[32] Where the Commissioners decide to approve the fund in spite of the absence of any of these conditions, they may attach to their approval such conditions as they think fit. If all the conditions which are above described both as being essential and as capable of being waived by the Commissioners, are shown to their satisfaction to have been fulfilled, it would not appear that they have any power to withhold approval of the fund.[33] Applications for approval are to be made before the end of the year of assessment to which they relate; any alteration in the rules, etc., must be notified; and upon failure to do so, or where the fund ceases to satisfy the above requirements, the approval may be withdrawn.[34] Trustees or managers of a superannuation fund, and employers who contribute, and whose employees contribute, must when required furnish certain returns and accounts.[35]

The exemption is to be claimed by the trustees in the same manner as an "allowance or deduction" is claimed and proof is to be given in the same way.[36] In the settlement the revenue authorities may set off any tax for which the trustees are required to account in respect of returned contributions or of lump sums paid in lieu of annuities.[37]

Claims for Exemption before Special Commissioners—Where application for exemption has to be made to the Special Commissioners,[38] it must be made in writing in the prescribed form[39] and verified by an affidavit, made by the treasurer, trustee or any duly authorised agent of the claimant body

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[32] "and" in the last line of sub-s. 3, proviso (iii), must mean "*or*"; it cannot have been intended, when the concession may be enjoyed by a trade, etc., so carried on by a person residing elsewhere, to exclude from it a trade, etc., carried on only partly in the United Kingdom by a person residing here, or a trade, etc., carried on wholly in the United Kingdom by a person residing elsewhere.

[33] This observation is rendered necessary by the peculiar negative form in which the substantive part of sub-s. 3 is cast.

[34] Regulations made under s. 32 of the Act of 1921, regs. 1—3, see p. 764.

[35] Reg. 10; see also s. 32 (4) (b).

[36] Reg. 12; see p. 766. [37] See regs. 8, 13.

[38] As indicated pp. 293 *sqq.* Claims under s. 37 of the Act of 1918 and s. 30 of the Act of 1921, are no longer so made; but an appeal may be brought to the Special Commissioners: Act of 1925, s. 19; see p. 526.

[39] Act of 1918, s. 40 (1), see p. 416.

before a general or additional commissioner for the division in which that person resides.[40]

The Special Commissioners on proof of the facts to their satisfaction shall allow the claim and issue an order for repayment.[41] No appeal is provided in this case, but if the Special Commissioners fail upon due proof to allow the claim, or to issue such an order, mandamus will lie to compel them to do so.[42] The Court has power to order the Special Commissioners to pay costs.[43]

Special penalties are attached to the making of false or fraudulent claims for exemption under sections 37—39 in respect of tax chargeable under Schedule C.[44]

A claim for repayment must be made within six years next after the year of assessment to which it relates.[45]

Local Authorities' Sewers—Local authorities are exempted from income tax in respect of sewers maintained by them in pursuance of their statutory duties in relation to the public health,[46] with regard to their assessment both under Schedule A[47] and Schedule B,[48] but the exemption does not extend to works for the disposal, purification or treatment of sewage.[49] The expression "local authority" is specially defined for this purpose, and includes not only ordinary urban and rural authorities, but such bodies as main or joint sewerage boards, and any other public body having power under any enactment relating to the public health to construct and maintain sewers.[50] The exemption applies, although the authority in which the sewer is vested obtains a profit by allowing another authority to use it. It does not, however, "extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer"; and the rules as to deduction of tax apply on making such payment.[51]

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[40] S. 40 (2).

[41] S. 40 (1), (3).

[42] *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, see p. 280, the Lords were unanimous on this question, which is dealt with by Lord HALSBURY, L.C., at 539, and by Lord HERSCHELL, at 569. The same procedure was applied in *R.* v. *Special Commrs., Ex p. University College of North Wales*, and *Ex p. Essex Hall*, see pp. 280, 283. See also Chap. 18.

[43] *R.* v. *Special Commrs., Ex p. Dr. Barnardo's Homes*, [1920] 1 K. B. 26, where the nature of the remedy was considered; the judgment was reversed on the merits (see p. 325), but that does not affect the decision on this point.

[44] S. 40 (4), *see* p. 416; as to penalties generally, see Chap. 16.

[45] S. 41, as amended by s. 30 (1) of the Act of 1923, see p. 416.

[46] Finance Act, 1921, s. 34, see p. 507, the decision in *Ystradyfodwg Main Sewerage Board* v. *Benstead*, [1907] A. C. 264, is thus no longer applicable to public health sewers; but the principles underlying it are still good law.

[47] See Chap. 2, p. 30.

[48] See Chap. 3, p. 55.

[49] *Summers* v. *Renfrewshire C. C.*, 1925 S. C. 118.

[50] Act of 1921, s. 34 (2); the definition excludes such bodies as Commissioners of Sewers and Drainage Boards, whose statutory powers do not relate to the public health.

[51] Act of 1921, s. 34 (1), proviso, must now be read with s. 17 of the Act of 1940, and with r. 19 or r. 21 of the General Rules, according as the payment is or is not made out of profits or gains brought into charge, see pp. 185, 196.

Funds for Reduction of the National Debt, etc.—Trusts for the above purpose are made valid by an Act of 1927, and the income arising from the original or accumulated funds of a trust which is so rendered valid, and any other profits which are liable to be accumulated under the trust, are exempt from income tax.[52]

The Reserve Bank of India enjoys exemption for any profits or income arising or accruing to its Issue Department.[53]

Exemptions conferred by Local Acts—In the eighteenth and the earlier part of the nineteenth centuries it was not unusual for a local Act authorising an undertaking which was esteemed to be of public benefit to contain a provision exempting that undertaking or its promoters from rates and taxes. Such enactments were formerly thought to apply only to rates and taxes in existence at the date of the Act, or substituted for what were then in existence; but it is now clear that they apply also to future rates and taxes unless there are words which show that such was not the intention of Parliament.[54] It falls to be decided, however, upon the language of each enactment whether it was intended to apply, not only to local rates, but to national taxes such as the income tax. If the Act shows that the undertaking was considered to be of national and not merely of local importance, the exempting clause will, if the language allows it, be construed in the wider sense.[55] And if that enactment clearly intends that the Crown is to be affected, the Crown need not be expressly named.[56]

Commissioners for river navigation and land drainage exempted by their local Act from the payment of "any taxes, rates, assessments or impositions whatsoever, any law or statute to the contrary notwithstanding" are exempt from income tax.[57]

Accordingly, where a local Act of the Thames Conservators provided that lands and buildings vested in them in respect of the Thames shall be "exempt from all parliamentary rates, taxes, and assessments and impositions whatsoever" (in addition to an exemption from parochial rates and taxes), the Conservators were held not to be liable to income tax in respect of such land and buildings.[58] The proprietors of a ferry forming an important link between Devon and Cornwall, and set up

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[52] Superannuation and other Trust Funds (Validation) Act, 1927 (17 & 18 Geo. 5, c. 41), s. 9; Finance Act, 1928, s. 30 (1), see p. 561.
[53] Act of 1934, s. 22, see p. 575.
[54] *Associated Newspapers, Ltd.* v. *City of London Corporation*, [1916] 2 A. C. 429
[55] *Pole-Carew* v. *Craddock*, [1920] 3 K. B. 109.
[56] *Stewart* v. *Thames Conservators*, [1906] 1 K. B. 909; the tax was claimed under Sched. A. No. 1 (see p. 20), and Sched. B (see p. 56).
[57] *Anchalee Drainage Commissioners* v. *Weldhen*, [1926] 1 All E. R. 219.
[58] See note [56].

under a local Act which provided that they "shall not be rated or assessed for . . . any tax, rate or assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry," were also held to be exempt.[59]

An exemption (by a local Act) of land occupied for business purposes does not prevent a deduction of its estimated annual value in computing trade profits.[60]

By section 213, no statute which grants any salary, annuity or pension free of tax is to be taken to exempt any person from tax; whatever this means, it has no effect with regard to any such statute passed after the Income Tax Act, 1842.[61]

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[59] *Pole-Carew* v *Craddock*, above; the tax was claimed under Sched. A, No. III, now transferred to Sched. D, see p. 136

[60] *Sinclair* v *Cadbury Bros.*, [1934] 2 K. B. 389, see p. 128

[61] *Argyle (Duke)* v. *I. R.* (1913), 109 L. T. 893, *In re Shrewsbury Estate Acts*, [1924] 1 Ch. 315. These decisions were given upon s. 187 of the Act of 1842; but the repeal and re-enactment of that section by the Act of 1918 can scarcely affect them.

CHAPTER 14

TOTAL INCOME

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For What Purposes Total Income is Ascertained—In the preceding chapters, income (as the word is understood in the Income Tax Acts) has been considered according to the various sources from which it is derived, and as it is chargeable with income tax at the standard rate: and it has so far been immaterial whether income is received by an individual, or by a company or other body of persons. But there are certain purposes for which it is necessary to ascertain the total income of an individual from all of those sources that may be possessed by him. First, his right to the various reliefs given by way of allowance or deduction[1] depends largely on his "total income,"[2] and his relief in respect of life insurance premiums and similar payments is calculated and limited according to his "total income from all sources."[3] Secondly, the surtax is levied "in the case of an individual whose total income from all sources exceeds a stated amount . . . " in respect of the excess of his total income over that amount.[4]

The income tax provisions applicable to the ascertainment of total income for the purposes of reliefs are applicable to the surtax also, and these are considered in the present chapter. But there are important provisions applicable to total income for purposes of surtax only,[5] which are reserved for the next chapter.

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[1] Chap. 1, see pp. 8 *sqq.* As to claims, see Chap. 16.

[2] Act of 1920, s. 17, Act of 1925, s. 15, see pp. 495, 524, see also Act of 1927, s. 40, p. 542. In the case of non-resident British subjects, income not chargeable with British income tax is included for the purpose of calculating such relief as is due to them: Act of 1920, s. 24 (1), proviso, see p. 9.

[3] Act of 1918, s. 32 (1), (3) (a), see p. 411.

[4] Act of 1927, s. 36 (1), see p. 541. As to returns, see Chap. 16.

[5] The above appears from s. 38 (2), however obliquely expressed. Provisions as to settlements are considered together in the present chapter, although s. 39 of the Act of 1938 applies for surtax only.

"Total Income"—The enactments just cited afford little or no guidance as to how the "total income" of an individual "from all sources" is to be estimated or made up; nor is this directly laid down elsewhere in the Income Tax Acts. But the Acts provide what information is to be given in claims for relief,[6] and in "Declarations and Statements of Total Income":[7] and the prevailing practice, which has the sanction of the Courts,[8] is based upon this. The following passage affords a connected account of the statutory enactments and of the practice:—

"Section [27 of the Income Tax Act, 1918] then provides for the mode of claiming [any allowance or deduction]. The claimant is to deliver in the [prescribed form (which refers to section 207 and Fifth Schedule, No. XVII)] a declaration setting forth the sources of his income and the receipts from each source, 'and also (1) [all particulars of any yearly] interest or other annual payments, reserved or charged thereon, whereby [his] income [is] or may be diminished': and also (2) [all particulars of sums which he has charged or] may be entitled to charge [on account of tax] against any other person; or (3) [which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable]. Heads (2) and (3) refer to the amounts of tax which under [section 17] he cannot recover because he can deduct it from another person. The reason for head (1) is not expressly stated, but I think it must mean the provision of means of calculating deductions from income to obtain [any allowance or deduction] and must involve an authority to deduct those sums from the total income to get the income for the purpose of [any allowance or deduction] . . . When one seeks further light from the 'form' prescribed in [section 207; Fifth Schedule, No. XVII] the first and second heads give the total amount of income for which the claimant is either (1) assessed or (2) has to allow deduction of duty by others who are assessed; (3) is the amounts he can deduct from the total of (1) and (2); (4) gives the sum arrived at by deducting head (3) from the heads (1) and (2). Head (5) is apparently to inform the revenue as to other persons who have income from which tax is deducted at the source."

Total income may therefore be defined[9] as the sum of the

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[6] Act of 1918, s. 27 (1), see p. 409. See also Chap. 16, pp. 362—3.

[7] This is the heading given to No. XVII in the Fifth Sched. to the Act of 1918 by Part III of the Fifth Sched. to the Act of 1927, see p. 492. See also Act of 1918, s. 207, p. 446.

[8] *Earl Howe* v. *Inland Revenue*, [1919] 2 K. B. 336, see *per* SCRUTTON, L.J., at 351, 352. The case arose under the Act of 1842, but the passage quoted is equally applicable to the enactments now in force, and the writer has ventured to insert in it references to and quotations from the Acts in their current form.

[9] Apart, of course, from the special surtax provisions dealt with in Chap. 15.

amounts for which the individual is assessed, and of those for which he has to allow deduction of tax by others who are assessed or who have themselves to allow such a deduction, *less* the amount of any interest, annuities or other annual payments which are to be paid out of the property or profits or gains assessed on the individual, and upon which the individual can deduct the tax against the recipient.[10] Life assurance premiums, for instance, cannot be deducted.

It is immaterial[11] whether the amounts in question (charged directly or by way of deduction) are assessable under Schedule A, B, C, D or E, so long as they are assessable under one or the other;[12] the whole of the income charged under any one of them is to be brought into the calculation, subject to any deduction that may be applicable as above indicated.

An assessment that has become final and conclusive for the purposes of tax cannot be re-opened for the purpose of estimating total income;[13] and it is provided generally that no allowance or adjustment can be made for this purpose on the ground of diminution of income or loss; such an allowance or adjustment can only be made in total income, if it has previously been made on an application with regard to tax in respect of the particular source of income concerned.[14] But there is a special provision for adjustment of total income in respect of prior losses, where a business has been sold to a company.[15] The deduction of payments and contributions in respect of war injuries to employees is expressly prohibited.[16]

Income from Property in, or Occupation of, Lands—In the calculation of total income, the income of the owner of any land is represented by the annual value estimated under Schedule A (as reduced by the various deductions for repairs and losses allowed under that Schedule),[17] or by the rent which he actually receives, if that is lower than the annual value as so reduced. But if that annual value as reduced is higher than the rent paid by a tenant, the difference between the two sums forms part of the total income of the tenant,[18] for the amount of the difference represents the value for the year of

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[10] *Earl Howe* v *I. R.*, above. See "Sums paid over to other Persons," p. 206.

[11] See *Trennant v. Smith*, [1892] A. C. 150, *per* Lord MACNAGHTEN, at 161; *I. R. v. Miller*, [1920] A. C. 222, 232, 239, 241.

[12] Act of 1918, s. 1, see p. 406.

[13] This prohibition does not apply where the assessment has been made by consent, without jurisdiction: *Ripden* v. *I. R.* (1935), 19 Tax C. 642.

[14] S. 18, see p. 407. Act of 1927, s. 42 (4), see p. 544; as to claims for adjustment, see pp. 151—154. See also Income Tax Act, 1945, s. 56 (3), p. 729.

[15] Act of 1927, s. 29, see p. 537; as to business loss, see pp. 151—154.

[16] Act of 1941, s. 17 (1): see p. 116. "War-risk payments." The other prohibitions indicated in that paragraph, of course, apply to the computation of the various parts of which "total income" consists.

[17] See Chap. 2. These deductions are considered on pp. 32—35; they arise under the rules of No. V of Sched. A, which are (among others) applied to the surtax by s. 38 of the Act of 1927.

[18] *I. R. v. Forgus* (1926), 10 Tax C. 695.

the property which the tenant has in the land while the tenancy continues.[19] If, on the other hand, the annual value as so reduced is less than the rent, the tenant cannot in ascertaining his total income deduct more than the reduced annual value,[20] because it is only upon the latter amount that he can deduct tax in paying the rent.[21] Income from the occupation of lands is represented by the " assessable value " on which tax is levied under Schedule B, as reduced by deductions for losses, etc.[22] An owner-occupier of land who is assessed under both Schedules A and B has to bring in the amounts of both assessments.[23] An individual who is a coparcener, a joint tenant, or a tenant in common, of the profits of any property brings in to his total income such part of the amount assessed as is proportionate to his share and interest; so also does an individual who is a tenant of lands or tenements in partnership, where the partners are in actual joint occupation and are entitled to the profits in shares.[24]

The inclusion of annual value in the occupier's total income does not depend on his power to let or sub-let the property.[25] It is true that the privilege accorded to a bank manager of living in a dwelling-house (in which he is obliged to live, as one of the conditions of his employment) attached to the bank is not included in his total income, but the reason is that he is not the occupier of the house—which is, because of that condition, in the occupation of his employers—and he is not, therefore, assessable for its annual value under Schedule A.[26]

Where a person is allowed by trustees or executors, in the exercise of discretion, to reside in a mansion-house, the annual value assessed under Schedule A forms part of his total income.[27] So, where the beneficiary is entitled to reside in a house and enjoy lands, which are the subject of a trust, and the trustees have no discretion to prevent her, her total income includes the annual value which is assessed under Schedule A as well as that which is assessed under Schedule B;[28] and where there is more than one beneficiary so entitled, and in fact resident in the mansion, the annual value of the house (assessed

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[19] Cf. *Mansfield* v. *Relf*, [1908] 1 K. B. 71, and the cases there cited. See the speech of Lord BUCKMASTER in *I. R.* v. *Miller*, below, for an exposition of the whole matter.

[20] *Solomon* v. *I. R.* (1933), 18 Tax C. 227. The rent in that case was called a " ground rent," and r. 4 of No. VIII of Sched. A was treated as applicable, but if the case arose under r. 1, the result would apparently be the same: see Chap. 2, pp. 43, 52.

[21] See *Earl Howe* v. *I. R.*, p. 297.

[22] See Chap. 3; and cf. the preceding note. [23] S. 19, see p. 407.

[24] S. 20; see proviso (i) thereto, p. 408. No such apportionment is possible unless there is a real partnership as well as a joint occupation of land: see *McKie* v. *Luck*, and the other cases cited p. 9, notes 73, 74.

[25] *I. R.* v. *Miller*, [1930] A. C. 322, where the case next cited is explained.

[26] *Trennant* v. *Smith*, [1892] A. C. 150, see p. 28.

[27] *Tullamacke* v. *I. R.* (1926), 136 L. T. 444, *I. R.* v. *Lady Wakerton* (1940), 23 Tax C. 48. The Scottish decision to the contrary in *I. R.* v. *Wemyss*, 1924 S. C. 281 was overruled in *I. R.* v. *Miller*, above.

[28] *I. R.* v. *Miller*, [1930] A. C. 222.

under Schedule A) must be apportioned to each of them, and the appropriate part included in her total income.[29] The annual value of a manse of which a minister of religion is the occupier forms part of his total income, whether he is entitled to let the manse or not.[30]

Again, where the outgoings (repairs, rates, etc.) connected with a mansion-house or lands are directed to be paid by the trustees and not by the beneficiary who resides in the house and enjoys the lands, or receives the net income derived therefrom, the amount of the outgoings (with the addition of income tax thereon) forms, speaking generally, part of the total income of the beneficiary;[31] but the terms of the disposition may be such that the net income only should be included in the beneficiary's total income.[32]

A person entitled under a will to a life-rent from an estate is not bound to include that life-rent in her total income, where the executors and trustees have elected to pay estate duty by instalments, and have in the meanwhile kept the estate in their own hands, paying to the beneficiary such income as was available in each year: only the amount thus receivable by her forms part of her total income.[33] In England, where a person is entitled under a will to a share of an estate, the income from that share forms part of the beneficiary's total income from the date on which the executors assent to the dispositions of the will; as this assent may be inferred from the conduct of the executors, it is a question of fact in each case on what date it has taken place:[34] if there has been such an assent, it is immaterial whether there are mortgage debts outstanding.[35]

Five-sixths of each instalment of a tithe redemption annuity under the Tithe Act, 1936, is (if the instalment is paid) to be deducted from the annual value of the land in respect of which the annuity is charged, and will thus be excluded from the total income of the owner of the land.[36]

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[29] *Shanks* v. *I. R.*, [1929] 1 K. B. 342, approved in the case last cited.

[30] *Corke* v. *Fry* (1896), 22 R. 422, as explained in *I. R.* v. *Miller*, above, where *M'Dougall* v. *Sutherland* (1894), 21 R. 753, was overruled.

[31] *I. R.* v. *Miller*, above (for want of information, a claim with regard to wages of foresters was abandoned by the Crown). *Donaldson's Exors.* v. *I. R.* (1927), 13 Tax C. 461, see also *Murray* v. *I. R.*, p. 105, note [71], and *Sutton* v. *I. R.* (1929), 45 T. L. R. 565.

[32] *Lord Hamilton of Dalzell* v. *I. R.* (1926), 10 Tax C. 406, which was not cited in *I. R.* v. *Miller*, above, and would appear not to be overruled.

[33] *de Robeck* v. *I. R.* (1928), S. L. T. 222, 13 Tax C. 346 (H. L.). A special case of rents paid to an heir-at-law and forming part of his total income will be found in *Duncan* v. *I. R.*, 1932 S. C. 151, see p. 195.

[34] *I. R.* v. *Wahl* (1933), 17 Tax C. 744, though the administrator and the beneficiary are the same person, it does not necessarily follow that he is receiving the income in the latter capacity: *ibid.*

[35] *I. R.* v. *Smith*, [1930] 1 K. B. 713, explaining *Daw* v. *I. R.* (1928), 14 Tax C. 88.

[36] Tithe Act, 1936, s. 13 (6); see p. 22. If not thus excluded, the five-sixths may apparently be excluded as interest: see p. 208.

Profits of Trade or Profession—The profits of a trade cannot be included in an individual's total income unless the trade is wholly or partly the property of that individual.[37] Where the trade or profession is carried on by a partnership, the total income of each partner for any year includes the share of the partnership profits to which he is entitled for that year;[38] the proportion is that fixed for the year by the agreement of partnership, etc.;[39] but the profits to which that proportion is applied are those ascertained for income tax purposes, it may be of the preceding year or of the actual year.[40] The method of division prescribed by the deed is to be followed; and if the deed provides for payment of salaries, commission or interest on capital, these must be ascertained separately, and not used as elements in the calculation of a percentage to be applied to the whole of the profits.[41]

Where an individual (or a partnership) has sold his business to a company during a year, the total income of the individual (or of any of the partners) for that year includes a portion of the profits of the business for that year, apportioned to the date of sale; it is immaterial that under the contract of sale the company receives the profits as from an earlier date.[42]

Dividends : Bonus Shares : Sums distributed in Winding up—A company or other body of persons, charged to income tax on its profits and resident in the United Kingdom,[42a] is (unless it is a "registered society") entitled to deduct tax in distributing a dividend,[43] the deduction being calculated at the standard rate for the year in which the payment becomes due.[44]. The dividend so received forms part of the total income of the recipient in that year, although it represents or includes a distribution of profits earned before that year,[45] and although it is paid out of

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[37] *Walker* v. *Reith* (1906), 8 F. 381, see p. 245. Cf. *Bonner* v. *Frood*, p. 147.

[38] Act of 1918, s. 20, proviso (ii), see, however, *Rigden* v. *I. R.* (1935), 19 Tax C. 542, p. 298. A French "société en nom collectif" is not a partnership for this purpose: *Dreyfus* v. *I. R.* (1929), 14 Tax C. 560.

[39] If as to any part of the profits there is no agreement fixing the shares of the partners, that part is not included in the total income of any partner: *Franklin* v. *I. R.* (1930), 15 Tax C. 464.

[40] *Gresty* v. *I. R.*, [1913] 3 K. B. 396; *Lewis* v. *I. R.*, [1933] 2 K. B. 557; see, however, *Lassen* v. *I. R.* (1928), 138 L. T. 463. As to estimation of trade profits, see pp. 97 *sqq.*

[41] *Lewis* v. *I. R.*, above.

[42] *Bartlett* v. *I. R.*, [1914] 3 K. B. 686; *I. R.* v. *Roberts* (1925), 41 T. L. R. 623; cf. *Adams* v. *Morgan, Ltd.*, [1934] 1 K. B. 751. An adjustment in respect of earlier losses may be claimed: see p. 153. As to the amount to be included in respect of dividends from shares in the company, see below.

[42a] *Canadian Eagle, etc.* v. *R.*, p. 184.

[43] General Rules, r. 20, see p. 260. A peculiar case where shares in a "one-man" company were sold *ex div.* will be found in *I. R.* v. *Sanderson* (1921), 8 Tax C. 38; see also *Sanderson* v. *I. R.* (1924), 9 Tax C. 80. As to registered societies, see p. 154.

[44] Act of 1927, s. 39 (1), see p. 542. The provisions for cases in which the dividend has been paid before the passing of the annual Finance Act are indicated p. 237.

[45] S. 39 (2); *Hurll* v. *I. R.* (1923), 8 Tax C. 292; *Duncan* v. *I. R.*, 1923 S. C. 388; 8 Tax C. 433. Cf. *Leigh* v. *I. R.*, [1928] 1 K. B. 73, p. 305. Provision is made for relief as regards surtax in cases where the dividend represents income of more than a year: Act of 1927, s. 34, see p. 347.

an amount representing the excess of the rents received by the company over the annual values by which its liability to tax in respect of its property is measured.[46] But a dividend is not to be included in total income, so far as it represents a distribution of capital receipts.[47] If, on the other hand, the dividend is partly paid out of profits on which tax has not been paid by the company, there is no abatement on that account;[48] and a dividend which represents a distribution of income tax repaid to the company in consequence of a successful appeal is to be included in the shareholder's total income.[49]

The dividend received must be increased by tax at the standard rate if tax has been deducted; and also if it purports to have been paid "free of tax."[50] And the same principle applies wherever a dividend from which deduction of tax is authorised by rule 20 of the General Rules[51] is paid without the full deduction so authorised: the "grossed" amount of the dividend forms part of the shareholder's total income.[52]

Where shares are bought with the right to receive a forthcoming dividend, the dividend forms part of the purchaser's income, not of the vendor's:[53] the increase in the price cannot be set off against the dividend.[54] Where shares are bequeathed as a specific legacy, to which the executors have given a delayed assent, the dividends payable after the date of the testator's death nevertheless form part of the legatee's total income for the years in which they became payable.[55] Where, as the result of an action, a contract for the sale of shares is rescinded, and a sum representing dividends distributed in the intervening years is paid to the original owner of the shares, those dividends

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[46] *Neumann* v. *I. R.*, [1934] A. C. 215, see p. 261, the excess had been held not to be taxable in *Fry* v. *Salisbury House, Ltd.*: see p. 71.

[47] *Gimson* v. *I. R.*, [1920] 2 K. B. 246; approved by the H. L. in *Neumann* v. *I. R.*, above, [1934] A. C. 229, 238. Contrast *Williams' Exors* v. *I. R.* (1942), 25 Tax C. 23.

[48] *Hamilton* v. *I. R.*, [1931] 2 K. B. 495, see p. 261.

[49] *Bean* v. *I. R.* (1937), 22 Tax C. 1 where s. 7 of the No. 1 Act of 1931, see below, was held to have a retrospective effect. The point that the sum in question had already been brought in for surtax, by the "grossing" of the dividend originally paid, is not dealt with in the judgment.

[50] *Samuel* v. *I. R.*, [1918] 2 K. B. 553; *Att.-Gen.* v. *Ashton Gas Co.*, see p. 262, note [42]. Act of 1927, s. 30 (1) and (2), above; No. 1 Act of 1931, s. 7 (2), see p. 263, note [44]. In other words, the income from the shares is represented by the gross amount, which, after deduction of tax at the standard rate, leaves the amount received. The same rule is applied where a dividend (other than a preference dividend or the variable portion of a participating preference dividend) has been paid before the passing of the annual Finance Act, under deduction of tax at a greater or less rate than that afterwards fixed for the year: Act of 1920, s. 12 (3), (4), see p. 522. The preference dividends excepted will, of course, be brought up to an amount representing the fixed rate per cent. by writing back the amount actually deducted. See also p. 261. [51] See note [43].

[52] Act of 1940, s. 20 (1), (3), see p. 640, overriding *I. R.* v. *Neumann*, [1934] A. C. 215, on this point, and *Cull* v. *I. R.*, [1940] A. C. 51; see pp. 261, 262.

[53] *I. R.* v. *Oakley*, [1926] 1 K. B. 131; see, however, pp. 345—348.

[54] *I. R.* v. *Forrest*, 1924 S. C. 460; 8 Tax C. 704.

[55] *I. R.* v. *Hawley*, [1928] 1 K. B. 578.

form part of his total income for those years.[56] A dividend which only becomes payable after the shareholder's death is not apportionable so as to cause any part of it to be included in his total income.[57]

In the case of a bonus allotment of shares (although made in respect of profits earned), the shareholder does not receive their face value, nor is he to be considered in law to have received that or any other sum of money; the transaction is in substance not a payment of income but an increase of capital; the shares thus allotted to any individual do not, therefore, form part of his total income for purposes of surtax.[58] In the case just cited, there was no option to take payment in cash; but the same rule applies where, although such an option has been formally given, the substance of the transaction is that the undivided profits are to be converted into paid-up capital, and the shares are in fact accepted.[59]

And a similar result follows where the distribution to the shareholders is made (without any option to receive the bonus in cash) as an issue of debenture stock, redeemable on notice by the company or so soon as the security becomes enforceable,[60] or of debentures, redeemable on notice by the company or the holder, and in fact paid off a few weeks after the distribution.[61] "The substance of the transaction is to convert undivided profits available at once for dividend . . . into capital assets of the company with a specific charge on them . . . not exercisable at the will of the shareholder, but only payable in future events depending on the company . . . Nothing was received by the shareholder except the acknowledgment of a debt."[62] Undivided profits, however, purporting to be distributed, but placed to a loan account on the condition (*inter alia*) that the amount credited to each shareholder shall be

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[56] *Spence* v. *I. R.* (1941), 24 Tax C. 311.

[57] *I. R.* v. *Henderson's Executors*, *Wood* v. *Owen*, see p. 277. Cf. *Rogden's Executors* v. *I. R.* (1938), 19 Tax C. 474, p. 277.

[58] *I. R.* v. *Blott*, [1920] 2 K. B. 657, [1921] 2 A. C. 171, see p. 261. This decision followed that in *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, which arose between tenant for life and remainderman. But *Bouch* v. *Sproule* does not apply to a distribution in cash (not shares) of money received by a company from the sale of its capital assets, and such a cash payment is income of the tenant for life. *In re Bates*, [1928] Ch. 682; *Hill* v. *Permanent Trustee Co. of N. S. W., Ltd.*, [1930] A. C. 720.

[59] *I. R.* v. *Wright*, [1927] 1 K. B. 333 (C. A.), and see *per* Lord Finlay, [1921] 2 A. C. 198. In *I. R.* v. *Cole*, [1926] 2 K. B. 246, which arose out of the same transaction of the company as *I. R.* v. *Wright*, but where the option was exercised as to the greater part of the shares, Rowlatt, J., held that the cash received and the shares accepted formed part of the total income, no appeal was brought, but as to the shares the decision was, in effect, reversed in *I. R.* v. *Wright*, and the judgments in C. A. make its correctness doubtful as regards the cash.

[60] *I. R.* v. *Fisher's Executors*, [1926] A. C. 395.

[61] *Whilmore* v. *I. R.* (1925), 10 Tax C. 645. Loans to a controlling shareholder in a company may not be a part of his total income. *I. R.* v. *Sassoon*, [1921] 2 K. B. 492. But see "Investment Companies," p. 341. See *Aykroyd* v. *I. R.* (1942), 59 T. L. R. 10.

[62] *I. R.* v. *Fisher's Executors*, *per* Scrutton, L.J., [1925] 1 K. B. 469, 472.

repayable on six months' notice by the shareholder, are part of the shareholder's income.[63] Nor is a dividend any the less income because distributed on the understanding that it shall be used by the shareholders for the purchase of further shares in the company.[64] And where a company distributes to its shareholders, by way of bonus, shares held by it in another company, the sum realised by the allottee for the sale of those shares is chargeable with income tax,[65] and is, therefore, to be included in total income. So is the value of shares held in another company, representing undivided profits of the holding company, and distributed by the latter to its shareholders, provided there is no increase of its capital and no substitution of these shares for shares in the holding company.[66]

Where a company possessing a balance of undistributed profits is wound up, and that balance is divided among the shareholders, each shareholder receives his portion as his share of the company's surplus assets, and it does not form part of his total income.[67] On an amalgamation, however, where shares in one of the original companies are sold to the new company in consideration of shares in the latter, but profits made by the old company to the date of amalgamation are distributed to its shareholders, those profits do not form part of the purchase price of the shares, but are to be included in the total income of the recipients.[68] If a business is sold to a company during a year, and the dividends paid on shares received by the vendor include profits made up to the date of sale, such part as is paid out of those profits must be deducted from the dividend in arriving at the vendor's total income for that year.[69]

The provisions for levying surtax on the income of certain companies are considered in the next chapter.[70]

Interest : Various Annual Receipts—Where under a will a share of the income from investments is payable to a beneficiary, the trustees paying the expenses of management, the trust may be such that the total income of the beneficiary includes only her share of the net income after those expenses have been

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[63] *I. R.* v. *Doncaster* (1924), 8 Tax C. 623; the subsequent decision in the case last cited seems to leave this decision untouched. See "Investment Companies," p. 310.

[64] *Rae* v. *I. R.* (1924), 131 L. T. 256; 8 Tax C. 613; *cf. Parker* v. *Chapman* (1928), 138 L. T. 729, p. 249.

[65] *Pool* v. *Guardian Investment Trust Co., Ltd.*, [1922] 1 K. B. 347, see p. 110; see also *per* Lord Cave, L.C., in *I. R.* v. *Fisher's Executors*, [1926] A. C. 402.

[66] *Williamson* v. *I. R.* (1931), 16 Tax C. 52; *Briggs* v. *I. R.* (1932), 17 Tax C. 11.

[67] *I. R.* v. *Burrell*, [1924] 2 K. B. 52; see, however, Sch. of 1927, s. 31 (4)—(6), p. 537.

[68] *I. R.* v. *Roberts* (1927), 13 Tax C. 277. The arrangement was somewhat different, but the result was the same, in *Cole* v. *I. R.* (1933), 18 Tax C. 267.

[69] *I. R.* v. *Roberts* (1925), 41 T. L. R. 623, see p. 201.

[70] Act of 1922, s. 21; Act of 1927, ss. 31, 32; see pp. 231 *sqq.*

deducted.[71] If a legacy remains unpaid, and interest thereon is not demanded or paid, although there are funds out of which it could be met, such interest does not form part of the legatee's total income.[72] If an estate is insufficient to pay annuities under a will and the annuitants therefore have the residue divided among them, the payments are capital sums, and are not part of total income.[73]

An annuity or rentcharge payable free of tax is to be brought into total income, together with the tax on such interest at the standard rate;[75] as well as an annual sum so payable under an order of the Divorce Division.[76]

If arrears of interest that have accumulated over several years are paid in one sum, that sum forms part of the total income of the year in which the payment is received.[77] Interest which is due is not to be included in total income until it has been paid.[78] Compound interest receivable on a breach of trust forms part of the recipient's total income.[79]

Annual payments based on a percentage of gross receipts from sales of patent machines and made under deduction of tax are included in the total income of the payee, although paid in part consideration for the transfer of patent rights.[80] So is an annual payment by a colliery company to the surface owner for the right to let down the surface,[81] and an annual payment to the trustees of a deceased partner in respect of the firm's name and goodwill.[82] Annual payments of life assurance premiums made by a company on the taxpayer's behalf, under a business arrangement with him, are part of his total income.[83]

Wounds and disability pensions,[84] and allowances to war

[71] *Murray* v. *I. R.* (1926), S. L. T. 714, 11 Tax C. 133, *Macfarlane* v. *I. R.*, 1929 S. C. 453, see also the decisions as to income in relation to landed estates, p. 299.

[72] *Dewar* v *I. R.*, [1935] 2 K. B. 351 (C. A.), approving *Leigh* v. *I. R.* and *Lambe* v. *I. R.*, below. Followed as to an annuity forgone: *Woodhouse* v. *I. R.* (1936), 20 Tax C. 673.

[73] *I. R.* v. *Lady Castlemaine*, [1943] 2 All E. R. 471.

[75] *Shrewsbury* v. *I. R.*, [1936] 2 K. B. 582; even though the net sum payable would be exempt from tax, see p. 8, *I. R.* v. *Cook*, [1946] A. C. 1. For an annuity which was not to be "grossed," see *I. R.* v. *Watson*, 1943 S. C. 115.

[76] *Spalsbury* v. *Spofforth* (1937), 21 Tax C. 247.

[77] *Leigh* v. *I. R.*, [1928] 1 K. B. 73 (interest on mortgage bonds to bearer); *Champneys' Executors* v. *I. R.* (1934), 19 Tax C. 375 (C. A.) (debenture interest). As to relief with regard to surtax in such cases, see Act of 1927, s. 34, p. 540.

[78] *Lambe* v. *I. R.*, [1934] 1 K. B. 178.

[79] *I. R.* v. *Barnato* (1936), 20 Tax C. 455; see p. 183.

[80] *Jones* v. *I. R.*, [1920] 1 K. B. 711; instalments of a lump sum which were also payable, were not income; but see *Constantinesco* v. *R.*, *Mills* v. *Jones*, p. 203. As to spreading of patent royalties, see Chap. 7, p. 175.

[81] *I. R.* v. *Hope*, 1937 S. C. 585, 21 Tax C. 116.

[82] *Mackintosh* v. *I. R.*, see p. 195.

[83] *I. R.* v. *Lord Forster* (1935), 19 Tax C. 738.

[84] Act of 1918, s. 16 (1), see p. 462.

widows in respect of children,[84] are exempt from tax, and are not to be reckoned in computing total income. This applies to allowances representing compensation to a person in the service of the Crown for living on duty outside the United Kingdom; to certain "post-war credits" paid to members of H.M. Forces and other services, as such; and to war gratuities.[85]

Sums paid over to other persons : Life Assurance Premiums—As a general principle,[87] annual payments made to others under such conditions that the payer is entitled to deduct tax in making the payments[88] are to be excluded from the total income of the payer; "yearly interest" is thus deductible;[89] and the annual payment made to a wife under an agreement of separation[90] or an agreement for maintenance.[91] If there is an absolute legal obligation to make the payments, it is immaterial for this purpose that there is also a separate contract of service between the payer and the payee.[92] Where an annuity payable under a will is paid, in the exercise of an option allowing the payer time to prevent the sale of investments in which he has an interest, he may deduct the amount paid by him in calculating his total income:[93] but if the trustees make up the deficiency in such an annuity by borrowing sums which may ultimately have to be met out of the residuary fund, it does not follow that the residuary legatees can deduct such sums in computing their total income.[94] Where the price for the purchase of a business was fixed primarily at a lump sum, to be discharged by the payment of a stated fraction of the profits every year for ten years, and to be varied in accordance with the aggregate of such annual payments, these payments were capital payments, and were not deductible.[95] So was the payment for the share of a deceased partner, being an agreed portion of the profits for a period of three years;[96] but where on the retirement and

[84] Act of 1922, s. 27, see p. 513. [85] Act of 1943, ss. 18, 19, p. 677; see p. 16.

[87] See p. 297, but this is subject to the disposition being effective for reducing total income, see pp. 308, *sqq.* If the payment is affected by s. 25 of the Act of 1941, see p. 208, only the payment thus reduced is excluded *Fitzgerald* v. *I. R.* (1944), 60 T. L. R. 407; so also where the payment is affected by s. 26, see p. 156.

[88] See p. 185 *sqq.*, see also Act of 1918, s. 17, p. 407.

[89] *I. R.* v. *Hay* (1924), 8 L. T. 470, 8 Tax C. 630, contrast *I. R.* v. *Paterson* (1924), 9 Tax C. 163, *I. R.* v. *Parsons* (1928), 44 T. L. R. 420; *Perkins' Executor* v. *I. R.* (1928), 13 Tax C. 851, see p. 330. Interest payable on a breach of trust is deductible for this reason. *Barlow* v. *I. R.* (1937), 21 Tax C. 354, see p. 183.

[90] *Rodie* v. *I. R.*, [1924] 2 K. B. 196, see p. 349, an oral agreement has this effect, if binding. *Peters' Executors* v. *I. R.*, [1941] 2 All E. R. 620.

[91] *Hutchinson* v. *I. R.*, 1930 S. C. 293; 15 Tax C. 89, see p. 107. A payment under an order of the Master in Lunacy to make up the wife's income in each year to the amount required for her maintenance in a mental home has been held not to be deductible, apparently because it was not of a fixed annual amount: *Watkins* v. *I. R.*, [1939] 2 K. B. 420.

[92] *I. R.* v. *Duke of Westminster*, [1936] A. C. 1.

[93] *Dendler* v. *Howe* (1934), 19 Tax C. 1.

[94] *Bowen* v. *I. R.* (1937), 21 Tax C. 93.

[95] *I. R.* v. *Ramsay* (1935), 20 Tax C. 79; see also *Mallaby-Deeley* v. *I. R.* (1938), 55 T. L. R. 293 (C. A.), p. 209. [96] *I. R.* v. *Ledgard* (1937), 21 Tax C. 129.

death of a partner, the agreement was to pay a certain portion of the profits in each of the next three years under deduction of income tax, the annual payments were income payments, and were deductible in arriving at the total income of a continuing partner.[97] On the other hand, an annual sum payable to a company for a term of seven years under an agreement, the consideration of which was a capital sum equivalent to the aggregate of the annual sums payable, was deducted in arriving at total income.[98] In order to be excluded, the payments must be effective payments; they must not be returnable to the payer.[99]

For the purpose of calculating the total income, any payments made under such conditions (together, of course, with the income tax deducted) are deducted in the year in which they are payable, notwithstanding that they may have, in whole or in part, accrued due before that year.[1] The annual payments are to be deducted, even if they are not actually paid over to other persons but are set aside and credited to a fund which stands in the name of the payers, and in which other persons have an interest as well.[2] "Small maintenance payments" under Court orders are deductible in computing the payer's total income, although he must make them without deduction of tax.[3]

On the other hand, the relief given in respect of life insurance premiums for the purposes of income tax does not operate to diminish the total income on which surtax is payable.[4] And premiums payable under covenant in order to keep up policies assigned as securities for advances cannot be deducted in arriving at total income. These are not annual payments in respect of which tax can be deducted against the payee; their amount is therefore part of the income of the payer and not of the payee.[5] But where a covenant to pay premiums is only ancillary to a statutory arrangement under which the premiums are payable by trustees before any income arises to the beneficiary, they may not form part of his total income.[6]

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[97] *I. R.* v. *Hogarth*, 1941 S. C. 1, 23 Tax C. 491, the last case was distinguished.

[98] *I. R.* v. *Garvin* (1936), 20 Tax C. 529, the legislation as to "Investment Companies" (see p. 341) has superseded this decision in its practical effect.

[99] *Ambrumenil* v. *I. R.*, [1940] 1 K. B. 850, see p. 309. "Dispositions effective . . .," p. 324.

[1] Act of 1927, s. 39 (2), see p. 524, contrast *I. R.* v. *Hawley*, [1928] 1 K. B. 578, p. 302. And as to the date from which a restricted annuity is deductible, see *I. R.* v. *Haddington (Earl)*, 1924 S. C. 456. Deductions in respect of ground and other rents are limited by the Sched. A assessments *Solomon* v. *I. R.*, see p. 299.

[2] *Stocker* v. *I. R.*, [1919] 2 K. B. 702. [3] Act of 1944, s. 25 (4), see p. 686.

[4] That relief is given by way of a reduction of the amount of tax payable (Act of 1918, s. 32 (1), see p. 410), as other reliefs are now given. Act of 1927, s. 40, see p. 542. The remark in the text does not apply to those superannuation contributions which are deductible before arriving at the income chargeable: see pp. 125, 247.

Howe (Earl) v. *I. R.*, [1919] 2 K. B. 336, see p. 297. As to premiums paid by a third party, see *I. R.* v. *Lord Forster*, p. 305.

[5] *Lord Wolverton* v. *I. R.* (1931), 16 Tax C. 467.

Lunacy percentage cannot be deducted in arriving at the total income of a lunatic on whose estate it is charged.[7]

The prohibition against deducting interest on money borrowed for payment of premiums, etc., applies for purposes of surtax only, and is considered in the following chapter.[8] But, apart from this prohibition, if under a single-premium policy part of the premium is advanced by the assurance company and interest as it falls due is added to the principal of the loan, that interest cannot be treated as paid, or deducted in computing the total income of the assured:[9] neither can accrued interest which is set off in paying the policy-money on the death of the assured.[10] It has been held, on the other hand, that where under a mortgage net interest had been added to the principal debt, the gross interest must be excluded from the total income on which reliefs were calculated.[11]

In spite of the fact that income tax is not deductible therefrom, it would appear that five-sixths of each instalment of an annuity under the Tithe Act 1936, is to be excluded from the payer's total income, unless that has been effected by means of a deduction from the annual value of the land owned by him in respect of which the annuity is payable.[12]

Income under Dispositions: The Finance Act, 1922.—The Finance Acts of 1922, 1936 and 1938, contain enactments by which in certain cases income arising under "dispositions" and "settlements" is treated for tax purposes as income of the settlor, and not of the beneficiary. This amorphous legislation does not readily lend itself to reasoned summary; and the only practicable course seems to be a description of the provisions in the order in which they were enacted. Under those of the Act of 1922,[13] then, income which any person has (by any of the dispositions[14] there described) made over temporarily to a child or to some other person is to be deemed for income tax and surtax purposes to form part of the income, and of the total income, of the person who made the disposition, if living, and not of any other person. These provisions do not charge with tax income which would not, apart from them, be subject to

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[7] *Commrs. of A B* v. *Simpson* (1928), 14 Tax C. 29; *I. R.* v. *Sneath*, [1932] 2 K. B. 362.

[8] Act of 1930, s. 13; see p. 347.

[9] See *I. R.* v. *Oswald*, p. 196; even in *I. R.* v. *Lawrence Graham & Co.*, [1937] 2 K. B. 179 (now itself overruled). *Earl of Carnarvon* v. *I. R.* (1934), 19 Tax C. 155, was disapproved, and *Morland* v. *I. R.* *ibid.* 467, overruled.

[10] *Ripden's Executors* v. *I. R.* (1934), 19 Tax C. 474, in this case interest paid in cash by the assured in his lifetime was admittedly deductible.

[11] *O'Callaghan* v. *Newstead* (1940), 23 Tax C. 535; the decision was given *ex parte*, and based upon a literal application of the loose language of s. 17 of the Act of 1918 (see p. 375), and can hardly be reconciled with *I. R.* v. *Oswald*, see note [9], above, as to s. 17, see also p. 22.

[12] Tithe Act, 1936, s. 13 (5), (6), see p. 32.

[13] S. 20, see p. 500

[14] Defined in sub-s. 5.

tax, *e.g.*, the foreign income of a person not residing in the United Kingdom.[15] They appear however, since the amendment of Case V by the Act of 1940, to apply to the whole income in the case of a revocable settlement (see below) under which the settlor resident in this country has no proprietary interest in the assets or the income, but only a right to have the trust duly administered, the trustee being resident abroad.[16] Where there is more than one person who made the disposition, the provisions of these Acts apply to each such person as if he were the only one who had made it.[17]

Cases of two different classes are covered by section 20 of the Act of 1922;[18] a different date regulates the application to either class. These are, stated shortly, first, cases where the disposition is a voluntary one and makes the income applicable for some person other than the settlor for a period which cannot exceed six years;[19] and secondly, cases where the income is applicable for a child[20] of the settlor, but for a period less than the life of the child. A disposition under which the obligation to make payments might have lasted more than six years is not brought within paragraph (b) because, in the events which happen, it is discharged in a shorter time.[21] And that paragraph does not apply to a disposition which provides for the payment over more than six years of annual amounts ascertained according to a fixed formula, *e.g.*, by a constant fraction of income;[21] but if the disposition itself specifies different amounts as being payable in each year of the period, only the annual equivalent of the lowest of these can be treated as applicable for more than six years;[22] if there is to be a single payment of a fixed sum, followed by annual payments ascertained according to a fixed formula, paragraph (b) applies at least to the single fixed payment.[23]

As regards the second class of cases, the provisions of the Act of 1922 are applicable only to those settlements to which

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[15] *Marchioness of Ormonde* v. *Browne* (1932), 17 Tax C. 333, see note [16].

[16] In *Astor* v. *Perry*, [1935] A. C. 398, where the principle of the case last cited was applied to such a settlement, it was admitted that income then subject to tax under Cases IV and V was chargeable under the Act of 1922; and this still holds good. See p. 218.

[17] Act of 1943, s. 20, and 6th Sched., Part III applies to the Act of 1922; pp. 678, 680.

[18] Sub-s. 1, paras. (b), (c), see p. 508.

[19] The period of the obligation is reckoned from the time when it commences; and a covenant entered into on February 3, 1927, to make payments on each December 31 from 1928 to 1932 inclusive is "for a period which cannot exceed six years": *I. R.* v. *St. Luke's Hostel Trustees* (1930), 46 T. L. R. 580. The omission of a payment does not reduce the period to six years, *I. R.* v. *Lee*, [1943] 2 All E. R. 672, where the effect of repayment by the annuitants was also considered.

[20] See s. 20 (5). Dispositions made mutually by two persons, each in favour of a child of the other, are treated as one for the purposes of para. (c): *I. R.* v. *Clarkson Webb*, [1923] 1 K. B. 807.

[21] *I. R.* v. *Black* (1940), 23 Tax C. 715 (C. A.).

[22] *Mullaby-Deeley* v. *I. R.* (1938), 23 Tax C. 153 (K. B. D.); in C. A., the payments were held to be capital payments: *I. R.* v. *Prince-Smith*, [1943] 1 All E. R. 434.

[23] *d'Ambrumenil* v. *I. R.* [1940] 1 K. B. 850.

section 21 of the Act of 1936 does not apply;[24] and only so long as the child is an infant and unmarried. They do not apply to income from capital which will become the child's at the end of the period for which the income is payable to him, nor to income which is applicable for the child during the whole life of the settlor. A disposition which is excluded from one of the above classes may yet be within the other; and a bond for three years in favour of a child which is excluded from the operation of paragraph (c) because he is of full age, is within paragraph (b), so that the annuity paid under the bond is still deemed to be income of the father.[25]

A power of revocation with the consent of another person does not make a disposition applicable for less than the life of a child within the meaning of paragraph (c), unless and until the power is exercised;[26] nor does a possible contingency which might reduce the child's share.[27] A provision for forfeiture in case of bankruptcy or assignment or the execution of a charge does not have that effect;[28] but there has been a difference of judicial opinion on the question whether a provision for forfeiture in some other contingency brings the disposition within that paragraph.[29]

In a case of either class, the settlor can recover any income tax or surtax, paid by him in respect of the income in question, from the trustee or other person to whom the income is payable;[30] for purposes of surtax, that income is treated as the highest part of the income of the person who paid the tax.[31] Conversely, he is to hand over to such trustee or other person any additional allowance or relief[32] which he has obtained (by way of repayment of tax), owing to his income having been deemed to include the income payable to the trustee or other person.[33]

Income Settled on Children : The Finance Act, 1936.—The provisions of the Act of 1922 relating to cases in what has above been described as class (c), together with the decisions above referred to as affecting those cases, now remain in force only with relation to settlements to which section 21 of the Act of

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[24] See below.

[25] *Wiggins* v. *Watson's Trustees*, [1934] A. C. 264.

[26] *Mawray* v. *I. R.*, [1944] 1 K. B. 545 (C. A.)

[27] S. 20 (1), proviso (ii), see p. 509.

[28] A provision for forfeiture on marriage without consent of parents was held to do so in *Leeuti* v. *I. R.*, 1932, S. C. 629, 17 Tax C. 719, but this decision can hardly be reconciled with the subsequent decision of the H. L. in *Wiggins* v. *Watson's Trustees*, above; and in *Whigham* v. *I. R.*, [1941] 2 K. B. 18, where the provision was for forfeiture if the child should cease to be a British subject, the latter case was followed.

[29] S. 20 (2), see p. 509; a certificate which can be required from the Commissioners concerned is conclusive of the amounts of the income and of the tax paid.

[30] S. 20 (4); surtax is charged at increasing rates on the higher parts of the total income, see p. 329.

[31] See pp. 8 *sqq.*; and as to repayment, see pp. 201 *sqq.*

[32] S. 20 (3), see p. 509, the General Commissioners are empowered to decide finally as to the amount of any payment and as to its proper apportionment.

[33] *Gillies* v. *I. R.*, 1929 S. C. 131

1936 does not apply.[34] By this section, wider provisions are introduced which make income paid under settlements to or for the benefit of a child of the settlor, while[35] he is an infant and unmarried and during the life of the settlor, the income of the settlor for income tax and surtax purposes, and not of the child;[36] the decisions above mentioned have no bearing on the later section, which was, to some extent, passed in order to get rid of their effect.

It is true that section 21 does not on the face of it apply to all settlements under which income is paid for the benefit of a child of the settlor; it purports to exclude settlements which were, immediately before April 22, 1936, in such a form that they could never be revoked.[37] But the word "irrevocable" is given, as will be seen, a highly artificial meaning;[38] the word "settlement" includes any agreement, arrangement or transfer of assets;[38a] the word "settlor" includes any person who entered into the settlement, whether he contributed any of the funds or not;[39] and there is no power to distinguish between the various trusts or funds of the settlement for the purpose of seeing whether the section applies; nor is there any provision discriminating between settlements which are or are not entered into for the purpose of avoiding liability to tax.[40] Speaking generally, any provision for the benefit of the settlor, or (during the settlor's life) of his wife or her husband, brings the settlement within the scope of the section, if that provision is capable of coming into operation during the life of any child in whose favour income is settled.[41] As both husband and wife are usually parties to a marriage or post-nuptial settlement, and as in that case either will be a "settlor," it seems that almost all such settlements will be within the purview of the section; and that the income of the children will be aggregated with that of the surviving spouse, whether he or she contributed to the funds or not. A settlement will, however, be excepted which was (in the ordinary sense of the word) irrevocable on April 22, 1936, and was entered into by one of the spouses alone, and settles income or assets in favour of the children, but provides that the other spouse may receive income or assets only after the death of the spouse who entered into the settlement. For example, a settlement effected solely by the husband in favour of children in the first instance, but providing that after his death a sum

[34] Act of 1936, s. 21 (11), see p. 586.
[35] Or of any other person: sub-s. 1, see p. 584.
[36] See note 44, p. 312.
[37] Sub-s. 10; *I. R.* v. *Lord Glenconner*, [1941] 2 K. B. 339
[38] Sub-s. 8; see p. 313.
[38a] Sub-s. 9 (b); *Hood-Barrs* v. *I. R.*, [1945] 1 All E. R. 500
[39] Sub-s. 9 (c); note also the words which include reciprocal arrangements. And see *Copeman* v. *Coleman*, [1939] 2 K. B. 484, see p. 314
[40] Contrast s. 18, p. 321
[41] Sub-s. 8 (a); see p. 313.

may, in certain eventualities, be taken out of the income or assets settled on the children and paid to the widow, may be excepted. But the section will operate upon a settlement by the husband which provides for the payment of an annual sum to the wife during his lifetime, even after his death and so long as income is payable under it for an infant and unmarried child. A settlement made or entered into abroad is on the same footing for the purposes of this section as one that is made in this country.[42] Where there is more than one settlor, the section applies to each settlor as if he were the only one.[43]

The section continues to apply, as regards the income of each particular child, for the whole of any year of assessment, at the commencement of which he was an infant and unmarried.[44]

"Child" in section 21 includes a step-child, an adopted child, and an illegitimate child.[45]

In any year in which the section applies, the income tax proper in respect of the income concerned is to be paid by the settlor; he must include the income in his "total income"[46] for the purpose of surtax and for the purpose of calculating his reliefs.[47] The child obtains no relief in respect of the income; but the settlor appears not to lose the right to relief in respect of £50 for each child.[48]

A settlor who has paid any income tax or surtax in respect of income treated as his income under section 21 may recover the tax from the trustee or other person to whom the income is payable; and conversely, he must hand over to such trustee or other person any additional relief which he has obtained by way of repayment of tax owing to income being treated as his income under the section.[49]

Any party to a settlement may be required to furnish such particulars as the General or Special Commissioners think necessary for the purpose of section 21; the requirement must be made by notice in writing from the Commissioners, giving not less than twenty-eight days time; there is a maximum penalty of £50 for failure to comply without reasonable excuse, and a similar daily penalty after judgment.[50]

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[42] Sub-s. 10

[43] Act of 1943, s. 20, and 6th Sched., Part II, pp. 678, 679

[44] Sub-s. 1. There is an exception for any year in which the child's income under the settlement does *not* exceed £5: sub-s. 4.

[45] Sub-s. 9 (a). *Note* that the definition here is somewhat different from that in s. 21 (1) of the Act of 1920: see p. 14, note [85].

[46] See pp. 297 *sqq.* This income will be treated as the highest part of the settlor's income for surtax. Act of 1922, s. 20 (4), applied by sub-s. 5 of s. 21 of the Act of 1936.

[47] See Chap. I.

[48] As granted by Act of 1920, s. 21 (1), see p. 15, the provisions of sub-s. 3 appear to be overridden for this purpose by the words "for all purposes of the Income Tax Acts" which appear in s. 21 (1) of the Act of 1936.

[49] S. 21 (5), applying sub ss. 2 and 3 of s. 20 of the Act of 1922: see p. 809.

[50] S. 21 (7), see p. 586.

What Settlements are not "Irrevocable"—The provisions which lay down what settlements are not to be deemed irrevocable require to be closely studied for two reasons; first, as above pointed out, in order to see whether the settlement is excluded from the section, as having been "irrevocable" immediately before April 22, 1936;[51] and secondly, because, as regards "irrevocable" settlements which were entered into, and settlements which became "irrevocable," on or after that date, there are provisions which to some extent mitigate the effect of the section.[52]

A settlement, then, is not to be deemed irrevocable if the terms provide for the payment or application to or for the benefit of the settlor,[53] or (during his life) to his wife or her husband, of any income or assets in any circumstances whatsoever during the life of a child who is included in the settlement.[54] There are exceptions for settlements which provide against bankruptcy and so forth by the child,[55] and for settlements which direct income to be held on protective trusts under section 33 of the Trustee Act, 1925, for a period not less than the life of the child and not liable to be terminated by the happening of a specified event.[56]

Again, a settlement is not to be deemed irrevocable if the terms provide for its determination by the act or on the default of any person,[57] unless the result of the determination can, during the lifetime of any child to or for whose benefit the assets or income may be payable or applicable under the settlement, only be to benefit such a child, or the wife, husband or issue of such a child.[58] Thus, a settlement which provides that it may be determined by handing over the assets to each of the children absolutely, or by including them in the marriage settlement of each of the children, may yet be "irrevocable"; but such a provision must apply to all the children included in the settlement. The provisos[59] relating to bankruptcy and to section 33 of the Trustee Act, 1925, may also have some bearing on the provision as to determination on the default of any person. A settlement of preference shares may be

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[51] Sub-s. 10, see *I. R.* v. *Warden*, 1939 S. C. 47, *I. R.* v *Lord Delamere*, below; *Eastwood* v. *I. R.*, [1943] 1 K. B. 314.

[52] Sub-s. 3, see p. 584.

[53] Even though this depends on the discretion of the trustees. *I. R.* v *Lord Delamere* (1939), 55 T. L. R. 872. In *Jenkins* v. *I. R.*, (1944) 2 All E. R. 491 (C. A.), the terms did not so provide.

[54] Sub-s. 8 (a); the above is but a short summary: the reader is referred to the text: see p. 585.

[55] Sub-s. 8, proviso (i).

[56] Proviso (iii); the latter part of the proviso uses the language of s. 33 (1) (ii) of the Trustee Act, 1925 (15 Geo. 5, c. 19), with the omission of the words "other than an advance under any statutory or express power," which there qualify "event."

[57] Sub-s. 8 (b). "Any person" includes the trustees themselves: *I. R.* v. *Warden*, above.

[58] Proviso (ii).

[59] Provisos (i), (iii).

irrevocable where the settlor cannot modify the rights of the holders of the shares.[60]

Lastly, a settlement is not to be deemed irrevocable if it provides for the payment of any penalty by the settlor in the event of his failing to comply with its provisions.[61]

As already pointed out, the words "settlor" and "settlement" receive very wide definition.[62]

The Income Included—The income which is under section 21 to be treated as the settlor's includes (as well as all chargeable income) the whole of every kind of income "which would have been chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom."[63] Thus, not only are interest on War Loan stock and so forth,[64] interest on the stocks of foreign States,[65] interest on the stocks or dividends on the shares of foreign or colonial companies,[66] and Indian annuities[67] to be brought in, together with the whole of any income from foreign securities, shares, etc.,[68] but the whole income from any trade or profession carried on abroad, or any office, employment or pension which is a foreign possession; for though this would normally be chargeable only to the extent of the actual sums received in the United Kingdom by a resident,[69] the whole of such income, in the words above quoted, "would have been chargeable *if it had been*" thus "received."[70]

The section may thus make a settlor chargeable in respect of a larger amount than if the income were in every sense his own income.

On the other hand, "income arising . . . in a year of assessment for which the settlor is not chargeable . . . as a resident in the United Kingdom" is not to be treated as the "settlor's income."[71] The precise bearing of these words is not clear. They show, indeed, that liability to surtax can be disregarded, because that may arise whether the individual is resident or not;[72] as well as liability in respect of a trade carried on in the United Kingdom by an individual not resident." But the word "chargeable" presumably does not include

[60] *I. R. v. Prince Smith*, [1943] 1 All E. R. 434 [61] Sub s. 8 (c).

[62] Sub-s. 9 (a), (b), reference should be made to these paragraphs. The latter term may include an allotment of shares in a one man company. *Copeman v. Coleman*, [1939] 2 K. B. 484. [63] Sub-s. 9 (d). These terms are considered pp. 266, 321

[64] Income Tax Act, 1918, s. 46 (1), see p. 63

[65] Sched. C, General Rule (2) (d), see p. 62.

[66] Sched. D, Misc. Rule 7; see p. 184. [67] *Ibid.*, see p. 191

[68] Case IV, Case V, r. 1, see p. 219. In the above cases the question of ordinary residence affects the liability.

[69] Case V, r. 2, see p. 220. A resident is, of course, equally chargeable under this rule if he is also "ordinarily resident."

[70] The language here is stronger than that employed in s. 18 (1) ("if it were income . . . received . . . in the United Kingdom"), of which a different interpretation is submitted, see p. 223. [71] Sub-s. 9 (d), concluding part.

[72] See p. 84n [73] See p. 89.

liability to bear tax by deduction; although this is expressly referred to in the earlier part of the paragraph, there is no similar reference in the latter part. Again, the presence of the word "chargeable" seems to effect no object but the exclusion of a settlor who has an income of £110 or less and is therefore exempt from tax;[74] apart from this, it would surely have been enough to speak of a "settlor not resident in the United Kingdom." Lastly, it would seem that in applying these words, the liability to be charged under section 21 itself must be left out of account; otherwise the concluding part of the paragraph would be nugatory.

Further, any income of the settlement which is "dealt with" by accumulating it in any form and in such a way that it may in future become payable to a child of the settlor, or applicable for the child's benefit, is to be treated as income of the settlor, just as income paid to a child is so treated.[75]

This provision is somewhat modified as regards settlements which became "irrevocable" on or after April 22, 1936, and which are therefore within the operation of section 21.[76] Under such settlements, sub-section 2 is to apply only where the settlor is bound periodically to pay sums of money to the trustees, and can deduct tax in making the payments;[77] if income which consists of, or which directly or indirectly represents, such payments, is accumulated, it is to be treated as income of the settlor, but accumulations from other sources are not to be so treated. After income under such a settlement has been accumulated, however, if any sum is paid to or for the benefit of a child of the settlor (infant and unmarried at the commencement of the year of payment) that sum is to be treated as the settlor's income. There is, however, an exception apparently intended to protect advances made out of capital: if the aggregate amount of the sum last paid and all sums previously paid for any of the children (infant and unmarried at the commencement of the year when any such sum was paid) exceeds the aggregate of all sums paid for all the children (whether infant and unmarried or not) and of all sums accumulated since the settlement took effect or became irrevocable, whichever is the later date, the excess is not to be treated as the settlor's income.[78]

[74] Act of 1935, s. 19 (1), see p. 8, note 84.

[75] Act of 1936, s. 21 (2) (a). The language is extremely comprehensive, and should be studied in the original, see p. 584. Para. (b) contains provision for apportionment among the children of income not allocated by the settlement, possibly against the time when each comes of age or marries.

[76] See pp. 311, 312. The settlement must, of course, still be "irrevocable" when the income is "dealt with", sub-s. 3.

[77] Sub-s. 3 (a), see p. 584. See "Sums paid over to other Persons," p. 306.

[78] Sub-s. 3 (b), see p. 585. Payments "for the benefit of" a child are put in the same position as payment "to" a child. The actual language of the paragraph should be studied.

Income payable or arising under Settlements : The Finance Act, 1938—In Part IV of the Act of 1938 are contained provisions of various kinds for treating income arising and sums paid or payable under settlements as the income of the settlor. Their operation is not in any way dependent upon an intention to avoid tax on the part of settlor, beneficiary or trustees. They are in addition to any other provisions of the Income Tax Acts,[79] including those of the Acts of 1922 and 1936 summarised in the preceding pages.

The following cases are covered by section 38:- -

First, a settlement which can be determined,[80] wholly or in part, by any person (not necessarily the settlor) with or without consent, so that the settlor (or his wife or her husband) may cease to be liable to make any annual payments under the settlement; here the sums payable are to be treated as the income of the settlor only,—unless the liability to make them cannot be determined[81] within six years from the first payment becoming payable, and the like annual payments are payable throughout that period, in which case the enactment is not to be applied until the power to determine can be exercised.[82]

Secondly, a settlement under which the settlor, or his wife or her husband, may cease on payment of a penalty to be liable to make any annual payments, here, the sums payable are to be treated in the same way, but there is no such exception as last mentioned.[83]

Thirdly, a settlement which can be determined,[81] wholly or in part, by any person (not necessarily the settlor), with or without consent, so that the settlor (or his wife or her husband) may become beneficially entitled to the whole or any part of the property or income comprised in the settlement; here, the income, or the part of the income, is to be treated as income of the settlor only, unless the power cannot be exercised within six years from any particular property first becoming comprised in the settlement, in which case the enactment cannot be applied to income from that property, or from other property which represents it, until the power can be exercised.[84] This provision

[79] Act of 1938, s. 41 (3), see p. 617.

[80] By revoking or otherwise, *e.g.*, by putting a company into liquidation which the settlor controls and to which he has covenanted to make annual payments: *I. R.* v. *Payne* (1940), 23 Tax C. 610 (C. A.), followed, *I. R.* v. *Morton*, 1941 S. C. 467, *Dalgety* v. *I. R.* (1941), 24 Tax C. 260; *Burston* v. *I. R.* (1942), *ibid.* 285; *MacAndrew* v. *I. R.* (1943), 25 Tax C. 500. In *I. R.* v. *Hannan*, 1941 S. C. 435, there was held to be no power to revoke; see also *I. R.* v. *Prince-Smith*, p. 314.

[81] See *I. R.* v. *Hale*, [1943] 2 All E. R. 228 (C. A.), where the deeds were held to give no power to determine.

[82] S. 38 (1) (a) and proviso, see p. 613. *Taylor* v. *I. R.*, [1943] 1 All E. R. 699. The phrase "the like payments" would seem to be satisfied if the annual payments are to be ascertained according to a fixed formula: cf. p. 309.

[83] Sub-s. 1 (b).

[84] Sub-s. 2 with proviso.

is applicable, although the wife cannot become beneficially entitled until after the settlor's death.[88]

Fourthly, where the settlor has an interest in income or in property comprised in a settlement, whether revocable or irrevocable, any income arising during his life which is undistributed is to be treated as his income; but if his interest does not apply to the whole of the income or property, there is to be a proportionate abatement; and the settlor is not to be charged with tax on any amount on which he is to be charged in any of the first three cases described above.[89] Such an interest exists where any income or property may under the settlement become payable to, or applicable for the benefit of, the settlor (or his wife or her husband), in any circumstances whatsoever,[90] with certain exceptions. The excepted cases are, stated shortly, the bankruptcy of a beneficiary, an assignment or charge by a beneficiary, (under a marriage settlement) the death of both spouses and of any of the children, and the death of a person who would have become beneficially entitled to the income or property at twenty-five or some lower age.[91] It is also provided that if there is any person during whose life the income or property cannot become payable or applicable for the settlor (except on bankruptcy, assignment or charge), the settlor shall not be deemed to have an interest until that person is twenty-five years old or dies under that age.[92]

Several of the expressions above quoted are used in a very wide sense.[93] Thus, "settlement" includes "any disposition, trust, covenant, agreement or arrangement," and "settlor" includes any person who entered into the settlement, whether he contributed any of the funds or not, as well as any person who has made a reciprocal arrangement for another person to make or enter into the settlement.[94] References to the wife of the settlor include a reference to her as his widow;[95] and so is the widower included where the settlor's husband is referred to. Where there is more than one settlor, these provisions have effect in relation to each settlor as if he were the only one.[96]

"Income arising under a settlement" includes all the kinds of income which are described above as being included under

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[88] *I. R.* v. *Gaunt*, [1941] 1 K. B. 706 (C. A.).
Sub-s. (3) with provisos (a) and (b). *Barr's Trs.* v. *I. R.*, 1943 S. C. 157.
[89] Sub-s. 4; *Jenkins* v. *I. R.*, [1944] 2 All E. R. 491 (C. A.).
[90] Sub-s. 4, proviso (a). [89] Proviso (b).
[91] See s. 41 (4), p. 617, *I. R.* v. *Payne* and other cases cited in note [89]. *In Chamberlain* v. *I. R.*, [1943] 2 All E. R. 200 (H. L.), a complicated series of transactions did not result in the whole assets of a company being "property comprised in a settlement" within s. 38 (2).
[92] S. 41 (4) (b), (c).
[93] *I. R.* v. *Gaunt*, above. "Husband" has been held to include a possible second husband: *I. R.* v. *Tennant* (1942), 24 Tax C. 215.
[94] Act of 1943, s. 20, 6th Sched., Part I, pp. 678—9. The decision in *Herbert* (*Lord*) v. *I. R.*, [1943] 1 K. B. 288, is thus superseded.

section 21 of the Act of 1936.[94] In addition, "income arising under the settlement" also includes income of a privately controlled company which has been apportioned to a beneficiary or the trustees of the settlement as members or loan creditors of the company under section 21 of the Act of 1922,[95] or which could have been so apportioned if that body had been incorporated in the United Kingdom,—a somewhat surprising extension which involves a notional application of a lengthening chain of enactments, and an estimate of the effect of applying them, if they could be applied.

If, however, in any year the settlor is not domiciled, or not resident, or not ordinarily resident, then he is to have the benefit of that fact with regard to income which is to be treated as his under section 38 (2) or (3), as if it were actually his own;[96] and he will not be charged with tax on income which is subject to an exemption for persons not resident or not ordinarily resident,[97] or on any amount of income within Case IV or Case V, which, in the circumstances supposed, is not subject to tax if not received in this country.[98]

Finally, income is to be deemed "not to have been distributed" if it exceeds, and to the extent of the excess over, the aggregate of sums distributed to the beneficiaries as income,[99] together with trustees' expenses which would be properly chargeable to income if the settlement had not otherwise provided.[1] Where the trustees are trustees for charitable purposes, income applied to such purposes is to be included in the aggregate together with any income referred to in section 37 of the Act of 1918, or in section 30 of the Act of 1921.[2]

The provisions of section 38 apply only "so long as" the settlement is in the terms described in sub-section 1 or sub-section 2, or "so long as" the settlor has the interest described in sub-section 3. If the settlement is so varied as to take it outside any of those descriptions, the section will, therefore, cease to apply as from the date when the variation takes effect.[3] Apart from surtax, any income which is treated as income of the settlor under any of the above provisions and is not taxed

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[94] See pp. 314–135. The language of s. 41 (4) (a) (i) of the Act of 1938 is similar, but for the addition of the word "domiciled," to that of s. 21 (9) (d) of the Act of 1936.

[95] S. 41 (4) (a) (ii). See Chap. 17, and, *e.g.*, *Rosmead Investments, Ltd.* v. *I. R.*; *Penang, etc., Trust* v. *I. R.*, see pp. 337, 344. Where there is more than one settlor, see also Act of 1943, 6th Sched., Part I, para. 5 (2) (b), p. 6.9.

[96] S. 41 (4) (a), concluding sub-para. As to the meaning of the terms used, see pp. 311–314.

[97] Act of 1918, s. 46, Sched. C, r. 2 (d), see Chap. 4; Sched. D, Misc. Rule 7, see pp. 62, 63, 184, 191. [98] See Chap. 8.

[99] This seems to be the effect of s. 41 (4) (d) (i) of the Act of 1938, but note the word in parentheses.

[1] Sub. para. (ii). [2] Sub para. (iii); see Chap. 13.

[3] S. 39 (4), may, however, then come into play, see p. 291. The effect of any such alteration as regards the years 1937–38 and 1938–39 is provided for by s. 38 (7), proviso (c), and Third Sched. Part II, see p. 619, and, *e.g.*, *Russell* v. *I. R.*, p. 324.

at the source, is chargeable under Case VI of Schedule D subject to the ordinary deductions and reliefs.[4] Particulars may be required under penalty, and estimates made if these do not satisfy the Commissioners.[5] There are provisions for adjustment between settlor and trustees in respect of tax paid and repayments received, similar to those under the Act of 1922.[6]

Payments by Settlors : Act of 1938—The converse case of payments made by the settlor (or his wife or her husband) to the trustees of the settlement, whether directly or indirectly, is dealt with in section 39.[7] The effect of this section appears to be that if sums so paid would normally be allowable as deductions from total income,[8] they are not to be so deducted for purposes of surtax, except to the extent to which the aggregate of those sums exceeds the undistributed income of the settlement for the same year;[9] certain factors are added to the calculation which appear to secure that the settlor shall not have again to pay surtax under this section on the same amount of income that is treated as his income under sub-section 1, 2 or 3 of section 38. If any sum is paid by the settlor to "a body corporate connected with the settlement" it is treated as if it had been paid to the trustees.[10] Such a body corporate is defined[11] in terms that appear to indicate any company which is within the description of a privately controlled company in section 21 of the Act of 1922, or of an investment company in section 20 of the Act of 1936, as amended, whether any action under those provisions has been, or can be, taken against that company or not; as well as any body incorporated outside the United Kingdom to which such a description can, however loosely, be applied.

The provisions of section 39 apply to any settlement made after April 26, 1938, as well as to any settlement which was within any of the three classes of settlements described in sub-sections 1 and 2 of section 38, and is varied after that date so as to take it out of those classes; in the latter case they apply as from the date when the variation takes effect. It is immaterial where the settlement was made.[12] Where there is more than one settlor, the provisions are applied to each settlor as if he were the only one.[13]

This section affects the calculation of the settlor's total

[4] Third Sched., Part III, paras. 1, 2, see Chap. 10.
[5] Paras. 4, 5. [6] Third Sched., Part I: see p. 312.
[7] S. 39, see p. 618; and see sub-s. 5, and definitions of terms here used in s. 41 (4).
[8] see pp. 297, 308. [9] S. 39 (1), see paras (a), (b).
[10] Sub-s. 2.
[11] S. 41 (4) (c), see p. 618; cf. p. 318. As to such companies, see Chap. 15.
[12] S. 39 (4), see p. 615.
[13] Act of 1943, s. 20, and Sixth Sched., Part I (see especially paras. 1 and 4), pp. 678—9, see note [88], p. 317.

income for surtax only, and not for purposes of relief; and it is specifically provided that no relief is to be given in respect of so much of the income arising under the settlement as is equal to the aggregate of any sums that can be disallowed under this section.[14]

Capital Payments to Settlors : Act of 1938—The provisions of section 40 direct that capital payments made to a settlor by his trustees in lieu of distributing income shall be treated as his income. This section applies to any settlement, whether revocable or irrevocable and wherever and whenever made. The payments in question are sums paid directly or indirectly by the trustees to the settlor (or his wife or her husband) by way of loan or repayment of loan, and all sums paid otherwise than as income or for full consideration in money or money's worth;[15] there is an exception for sums which have become payable only by reason of the bankruptcy of a beneficiary or some other of the events specified in the proviso to section 38 (4).[16] On the other hand, sums paid by " a body corporate connected with the settlement "[17] are included, as well as those paid by the trustees themselves.

All these payments are to be treated as income of the settlor up to an amount equal to the income of the settlement which is " available " up to the end of 1938—39 or of any subsequent year of assessment; if the capital payments exceed the " income available " up to the end of any year, the excess is carried forward and similarly treated in the next year, and so on.[18] Where there is more than one settlor, these provisions are applied to each settlor as if he were the only one.[19]

The " income available " is merely another term for " the income arising under the settlement which has not been distributed " in 1938—39 and any subsequent year, less tax at the standard rate, and subject to certain other adjustments;[20] the meaning of " income not distributed " has already been indicated.[20] The other adjustments allowed by section 40 (2) seem intended to secure that the settlor shall not be taxed over again in respect of a capital sum paid in an earlier year, or in respect of income in regard to which he has been charged with tax under either of the preceding sections. Any income deductions are to be for net amounts (after deduction of tax at the standard rate) and relate, like the income adjusted, only to 1938—39 and subsequent years.

The result of the section, speaking broadly, seems to be that

[13] See previous page.
[14] Sub-s. 3, as to reliefs, see Chap. I
[15] S. 40 (1), (5), see p. 616. Terms used are defined in s. 41 (4).
[16] See p. 317, note [98].
[17] Defined in s. 41 (4) (c): see note [11].
[18] S. 38 (1) (a), (b), read with sub-s. 5 (b).
[19] Sub-s. 2.
[20] S. 41 (4) (d), see p. 318

the settlor (or his wife or her husband) will be charged with tax in respect of any capital payments made to him while there is any income undistributed and up to the amount of that undistributed income, subject to the adjustments in his favour above referred to. It is immaterial whether the settlor would be entitled to the income arising under the settlement if it were distributed, or to any part of it, or whether the income would go to some other person. Any capital sums thus treated as income of the settlor are to be "grossed" for that purpose.[21]

Tax at the standard rate will be charged under Case VI of Schedule D, and the ordinary deductions and reliefs will be allowed. Particulars may be required; if they are not satisfactory, estimates may be made.[22]

Transfers of Assets Abroad—"For the purpose of preventing the avoiding . . . of liability to income tax" by means of transfers of assets abroad, certain provisions are enacted in section 18 of the Finance Act, 1936.[23] Taken by themselves, the words above quoted from the preamble to the section appear to have no limiting effect;[24] but the individual concerned may show in writing or otherwise that the avoiding of such liability was not among the purposes for which the transfer and "any associated operations" were effected, or that both of these were *bona fide* commercial transactions and were not designed for that purpose; and if the Special Commissioners are satisfied on either ground, the operative provisions of the section are not to apply.[25]

The transfers of assets referred to are, firstly, those arranged by individuals ordinarily resident[26] in the United Kingdom, the result of which (together with any "associated operations") is that "*income becomes payable*" *to a person*[27] *resident or* domiciled abroad, but which give or preserve to the individual concerned in the transfer the power to enjoy that income, either forthwith or in the future.[28] Whatever is stated or enacted in the section regarding the individual concerned in the transfer relates also to his wife or her husband.[29] The "associated operations" above mentioned are defined in

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[21] S. 40 (4).

[22] Third Sched., Part III, paras. 1, 3, 4, 5. As to Case VI, see Chap. 10; as to reliefs, see Chap. 1. [23] See p. 579.

[24] Cf. *D. Carlaw & Sons* v. *I. R.*, p. 334, decided on somewhat similar words in the preamble to s. 21 of the Finance Act, 1922.

[25] Act of 1936, s. 18 (1a); *Cattaghan's Executors* v. *I. R.*, [1939] 1 K. B. 250. "Taxation" here includes death duties *Sassoon* v. *I. R.* (1943), 25 Tax C. 154 (C. A.).

[26] See pp. 221, 222.

[27] That person may, of course, be a company or other corporate body; and if any such is incorporated abroad, it is in every case to be treated as being resident abroad: sub-s. 4a, added by Act of 1938, s. 28. See *Gasque* v. *I. R.*, p. 221.

[28] The language employed in the preamble and sub-s. 1 is curiously inverted; but the above is thought to state its effect. [29] Sub-s. 5 (a); cf. *I. R.* v. *Gaunt*, p. 317.

far-reaching terms.[30] So also is the "power to enjoy" income, in a number of paragraphs, of which the last—"if the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income"—appears wide enough to comprehend all those that precede it.[31] In determining whether the individual has the power to enjoy income, it would appear that the legal form and effect of the transfer and associated operations are to be disregarded; all benefits which may, as their result, at any time accrue to the individual are to be taken into account, irrespective of their nature or form.[32] "Benefit" includes a payment of any kind; for instance, a repayment of debentures charged on income, or repayable out of income (so far as there is income available);[33] and the benefit may be very small in comparison with the income derived from the assets transferred.[34] "Assets" includes property and rights of every kind; and "transfer" includes the creation of rights. The phrase "income becomes payable" applies to a share of the profits of a trade carried on by a partnership; and the amount in such a case will be the share which the partners in accordance with the partnership-agreement determine to apportion.[35]

Again, where an individual (ordinarily resident) receives, or is entitled to receive, a loan or repayment of a loan, or any other sum paid or payable otherwise than as income and not for full pecuniary consideration, and where there is any connection between such receipt and a transfer of assets or any associated operation, then any income, which by virtue or in consequence of the transfer, etc., has become the income of a person resident or domiciled outside the United Kingdom, is to be treated as income of the individual first described. A single receipt of, for example, a loan appears to make the income thus chargeable for all time. It is immaterial whether the sum in question is received, or the right to receive it arises, before or after the transfer.[36]

In cases of both these classes, the income referred to is, for the purposes of income tax proper and of surtax, to be treated as income of the individual; but in cases of the former class,

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[30] Sub-s. 2, with which sub-s. 5 (e) should be read, for examples, see *Bentley* v. *I. R.*, *Latilla* v. *I. R.*, below; *Corbett's Exors.* v *I. R.*, [1943] 2 All E. R. 218 (C. A.)

[31] Sub-s. 2 (a)—(e): para. (d) includes the exercise of a power by a third party. For an illustration of paras. (c) and (e), see *Lee* v *I. R.* (1941), 24 Tax C. 207.

[32] Act of 1936, s. 18 (4). This direction seems to illustrate the meaning of "benefit" in paras. (a), (b) and (c) of sub-s. 2, where the word appears passim.

[33] Sub-s. 5 (c); *Bentley* v. *I. R.* (1940), 23 Tax C. 574; *Aplin-gal* v *I. R.* (1942), 59 T. L. R. 10.

[34] *Howard de Walden* v *I. R.*, [1942] 1 K. B. 389 (C. A.).

[35] *Latilla* v. *I. R.*, [1943] A. C. 377.

[36] Sub-s. 1A, added by Act of 1938, s. 28 (2). The definitions, etc. in sub-ss. 4A and 5 above summarised are applicable to this sub-section also.

only to the same extent that it would be if it were received by him in the United Kingdom.[37] For example, if that income is War Loan interest or interest on the securities of foreign States or British possessions, he will not be able to obtain exemption on the ground that the securities are vested in a foreign resident.[38] On the other hand the amendments made by the Finance Act, 1940, in Case V of Schedule D as to possessions out of the United Kingdom[39] have narrowed down the kinds of income which are charged only to the extent to which they are received in this country, and it is doubtful whether the words above referred to[37] now have much effect in excluding any part not received here, unless the income "arises from any office, employment or pension." Income arising from any trade, profession or vocation must be immediately derived by the person concerned from carrying it on, if the part received here is alone to be charged; and that can hardly be said where there has been such a transfer of assets as is contemplated by section 18 of the Act of 1936.[40] In a case of the former class, though the transferor has power to enjoy only a small part of the income from the assets transferred, the whole of that income may nevertheless fall to be treated as his income.[41]

In regard to both classes, the income dealt with will also include any income apportioned under section 21 of the Finance Act, 1922, to the person resident or domiciled abroad, which would (but for the transfer or associated operations) have been apportioned to the individual concerned.[42] It is immaterial whether the transfer or the associated operations, or both, were carried out before or after the passing of the Act of 1936.[43]

Income tax at the standard rate is to be charged on the income referred to in this section under Case VI of Schedule D,[44] so that the assessment may be made either according to the income of the year of assessment, or of the preceding year, at

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[37] Sub-s. 1. The words "if it were income received by him in the United Kingdom" seem capable of being read in this sense, and the difference between the language employed here and in s. 21 (9) (d), see p. 552, is presumably not unintentional; but see observations on the latter provision, p. 314. The words quoted do not appear in sub-s. 1A.

[38] Act of 1940, s. 21 (5), see p. 641; and see pp. 62, 63.

[39] Case V, r. 2, see pp. 218—221, and 230.

[40] The words "whether it would or would not have been chargeable to income tax apart from the provisions of this section" in s. 18 (1) and (1A) are illustrated in *MacDonald* v. *I. R.*, [1940] 1 K. B. 802. As to the present effect of *Astor* v. *Perry*, [1935] A. C. 398, see p. 309.

[41] *Howard de Walden* v. *I. R.*, see note [34]

[42] Sub-ss. 5, 6; as to these apportionments, see pp. 337, 344.

[43] Sub-s. 7, which also indicates when s. 18 commenced to operate. The amendments made by s. 28 of the Act of 1938, and indicated above, are effective only for the year 1937—38 and subsequent years: sub-s. 5, see p. 605. As to the retrospective effect on executors, see p. 277.

[44] S. 18 (6) and Second Sched., para. 1, see pp 581, 588.

the direction of the Special Commissioners;[46] the usual deductions and reliefs are to be allowed.[46] But if any of the income has already borne tax by deduction or otherwise, it is not to be charged again under the section;[47] and income which has been charged under this section is not to be charged again under the general provisions of the Acts, if subsequently received by the individual concerned.[48] As regards surtax, the income referred to in this section will form part of the individual's total income, and will be assessed and charged accordingly.[49] Both for income tax proper and for surtax, the assessments are to be made by the Special Commissioners;[50] they are given special powers, applicable for either of these purposes.[51] These include a power to require *any person* to furnish them with particulars; the requirement is to be made by notice in writing, giving not less than twenty-eight days for compliance; there is a maximum penalty of £50 for failure to comply without reasonable excuse, and a similar daily penalty after judgment.[52]

Dispositions Effective for Tax Purposes—In view of the provisions considered in the preceding pages, it would be unsafe to generalise as to the classes of dispositions which may still transfer the income to the beneficiary for purposes of income tax and surtax, as well as for other purposes.[53] But income to which a person has become entitled by a parol declaration of trust enforceable in equity may (if the disposition is not within any of the classes affected by these provisions) form part of the total income of that person, and not of the settlor.[54] Sums paid by trustees to a father or guardian for the education or maintenance of a child may form part of the total income of the child,[55] and sums paid by a father to trustees for that purpose may be deductible in arriving at the father's total income,[56] where section 21 of the Act of 1936 does not apply. With a similar qualification, the purchase of shares in a company,[57]

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[46] See Chap. 10 and p. 239.

[46] Second Sched., para. 2.

[47] Para. 1.

[48] Para. 3; *Aplin et al* v. *I. R.* (1942) 59 T. L. R. 10.

[49] See Chap. 15.

[50] Paras. 1, 4.

[51] Paras. 5—7.

[52] Para. 6. Act of 1939, s. 17, see p. 626, specifies certain matters as to which (among others) particulars may be required, but limits, to a certain extent only, the liability of solicitors and of banks to furnish particulars with regard to their clients' transactions.

[53] The difficulty is illustrated in detail in the judgment of LUXMOORE, L.J., in *Russell* v. *I. R.*, below.

[54] *Allan* v. *I. R.* (1925), 9 Tax C. 234. *Brennan's Trustees* v. *Scanlan* (1924), *ibid.* 427.

[55] *Johnstone* v. *Chamberlain* (1933), 17 Tax C. 706, following *Drummond* v. *Collins*, [1916] A. C. 1011, see p. 270.

[56] *Russell* v. *I. R.*, [1944] 2 All E. R. 192 (C. A.). Here also sums paid to the trustees for the children after they had come of age, but handed back by the latter to the father for safe keeping, were held effective to reduce the father's total income, see p. 288, note [24].

[57] *I. R.* v. *Wilson*, 1928 S. C. (H. L.) 42; 13 Tax C. 789.

or of a farm,[58] by a father for his pupil children with intention of making them a gift, coupled with the registration of the shares, or the taking of a conveyance, in the name of the child or children, may transfer the income from the shares, or the rent of the farm (even if the father pays the rent), to the children, so as to make it a part of their total income. But a transfer of the income from shares gifted by a father will not take place until the shares are registered in the name of the child.[59] The income of a trust, however, which must be devoted to paying premiums on an educational endowment policy for a child, is not income of the child.[60] And a scheme framed by a large shareholder in a company to transfer shares to employees of the company, as soon as the accumulated dividends should amount to the par value of the shares, does not prevent the dividends in the meantime from continuing to form part of the total income of the intending donor.[61] Income directed to be accumulated for an infant is referred to in the following chapter,[62] together with income subject to a trust for the reduction of the Debt.

Income during Administration—Part III of the Finance Act, 1938, is devoted to securing that income which arises during the administration of a deceased person's estate shall be brought into the total income of the person interested for surtax purposes[63] (and also for reliefs) and shall be charged with tax at the standard rate where the personal representatives cannot be charged by reason of foreign residence.[64] Some attempt is made below to indicate briefly its general effect.[65]

Section 30 deals with cases where residue is settled, and with persons who have a limited interest[66] in that residue or in a part of the residue. Any sum paid during the period of administration in respect of the limited interest is treated as the income of such a person for the year of assessment in which it was paid, or, if it was paid in respect of an interest which has ceased (*e.g.*, where the person has died before payment),

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[58] *Linton* v. *Chapman*, 1928 S. C. 209; 13 Tax C. 448.

[59] *Allen* v. *I. R.*, above.

[60] *Dewar* v. *I. R.*, [1931] A. C. 566. No question arose whether it should be treated as income of the settlor, it would probably be so treated under s. 21 of the Act of 1936.

[61] *I. R.* v. *Parsons* (1928), 44 T. L. R. 420.

[62] See p. 330; and p. 396 as to claims for repayment.

[63] The contrary had been decided by the C. A. in *Corbett* v. *I. R.*, [1938] 1 K. B. 567, applying the principle adopted in the cases of *Dr. Barnardo's Homes*, [1921] 2 A. C. 1, and *Maria Celeste Samaritan Society* (1926), 11 Tax C. 226, at the instance of the Revenue.

[64] Executors and administrators resident in this country are of course liable under the general law to be assessed or to have tax deducted against them: see, *e.g.*, pp. 276—278, and the specific provisions summarised at pp. 399, 402. Cf. s. 35 (8), p. 326.

[65] Ss. 30—37, constituting Part III, will be found pp. 605—613. Except in the case of a foreign estate, a charge of tax at the standard rate *on the person interested* is avoided by providing that the income is to be treated as having borne standard tax, see ss. 30 (4), 31 (4). [66] S. 35 (3).

as income for the last year of assessment in which it was subsisting;[67] but this does not apply to a sum paid out of capital by way of an addition to income, at the trustees' discretion.[67a] When the period of administration is completed, sums paid or payable are to be adjusted among the relevant years of assessment on the basis of their having accrued from day to day;[68] but any sum paid or payable as legacy duty charged in respect of the limited interest is excluded for purposes of surtax.[69]

Where the personal representatives are liable to bear, or have borne, United Kingdom tax, the sums in question are to be "grossed" for the purpose of calculating the interested person's total income.[70] In the case of a "foreign estate"[71]—that is, a case where the personal representatives[72] not being resident, or not being ordinarily resident, in the United Kingdom, can claim exemption from tax in respect of the whole or part of the income—the person interested is charged with standard tax on the amounts in question as if they were income from foreign securities under Case IV;[73] but if part of the income has borne United Kingdom tax, the facts must be proved to the Assessment or Appeal Commissioners, and the assessment will be reduced in a proportion based on *net* amounts; the amount of the reduction, however, must itself be grossed for inclusion in total income.[74]

Section 31 deals with cases where residue is not settled, and with persons who have an absolute interest[75] in the residue or in a part of the residue. Such a person is made chargeable in respect of any sum paid to him during the period of administration in respect of that interest for the year of assessment in which it is paid,[76] and on completion, he becomes chargeable in respect of the remainder of his residuary income for each year of assessment in that period.[77] Provision is made for ascertaining the residuary income of a person or succession of persons having an absolute interest in the residue or part of it;[78] and also for treating personal representatives of a deceased person who have rights in the estate of another as if they had an absolute or limited interest for their own benefit,[79] as well as for successive interests.[80] Legacy duty paid in respect of the

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[67] S. 30 (2).

[67a] *Cunard's Trust v. I. R.*, [1946] 1 All E. R. 159 (C. A.); see, however, p. 197.

[68] Sub-s. 3.

[69] S. 35 (10), see p. 611.

[70] S. 30 (4) (c).

[71] S. 35 (5) (a), (b).

[72] S. 35 (4). see also para. (5). As to residence, etc., see pp 221, 366.

[73] S. 30 (4) (b); Case IV is dealt with in Chap. 9.

[74] Sub-s. 5, with proviso. That part which remains charged under Case IV must of course also be included.

[75] S. 33 (2).

[76] S. 31 (3), read with sub-s. 2.

[77] Sub-s. 4, read with sub-s. 2.

[78] Ss. 32, 33 (2), 35 (6), (7).

[79] S. 33 (1).

[80] Sub-s. 2.

income or the absolute interest is to be deducted or excluded for purposes of surtax.[81]

The provisions as to "grossing" and as to charge of tax in respect of a foreign estate applicable to an absolute interest in the residue[82] are, speaking generally, similar in effect to those above described with regard to a limited interest; but the words "less the tax so borne" do not appear in section 31 (6), and therefore it would seem that the proportion must under the latter provision be calculated according to *gross* amounts.[83]

If in the exercise of a discretion a sum is paid for the whole or part of the administration period, that sum is treated as income of the recipient for the year of assessment in which it is paid, and is charged by the method applicable where a person has a limited interest in the residue.[84]

Particulars may be required (under penalty) from personal representatives and beneficiaries for the purpose of the above provisions.[85]

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[81] S. 31 (2), proviso; s. 35 (10), see pp. 606, 611.
[82] S. 31 (4)—(6); see above.
[83] Contrast s. 30 (5), above; the reason for the difference is not apparent.
[84] S. 33 (3).
[85] S. 34 (4); as to additional assessments, etc., see p. 372

CHAPTER 15

SURTAX

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Nature of the Tax—Instead of the super-tax, since the year 1928—29 there has been charged, in addition to the income tax at the standard rate on the particular sources of income which have been considered in Chapters 2—11, a further income tax at other rates, fixed by the annual Finance Act; this is called the "surtax."[1] It is charged only upon individuals, and upon the excess over a stated amount of the total income of the individual for any year of assessment; that "stated amount" is also fixed by the annual Act. But it is not payable, as is the income tax proper, in the year of assessment itself; the surtax is a "deferred instalment of income tax,"[2] and is payable on or before January 1 in the following year.[3] Thus, the amount on which surtax is assessable for the year 1945—46 is the excess over £2,000 of the total income for that year, which ends on April 5, 1946; the surtax is payable on or before January 1, 1947.[4]

It is immaterial that the individual may have ceased, before or during the year in which the surtax is payable, to have possessed any source of income which contributed to his total income for the year of assessment,[5] or that his income from any such source may have diminished;[6] and if he has died

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[1] Act of 1927, s. 38 (1), with proviso (b), see pp. 2, 541. As the surtax is not payable until the year of assessment is past (see below), the rates are capable of being changed by a Finance Act of the following year, this was done for the year of assessment 1940—41 by the No. 2 Act, 1940, s. 7, p. 645.

[2] *Ibid.*; cf. *Bourke* v. *Att.-Gen.*, [1912] 1 Ch. 123, *per* PARKER, J., at 135, 136; and see *In re Beckett*, [1932] 2 Ch. 144.

[3] S. 42 (1), p. 544.

[4] As to a trade or profession which he no longer carries on, cf. *Bartlett* v. *I. R.*, [1914] 3 K. B. 689; *I. R.* v. *Roberts* (1925), 41 T. L. R. 623, see p. 304; *FitzGerald* v. *I. R.*, [1919] 2 K. B. 154; as to a non-resident who has ceased to have taxable income in this country, cf. *Crane* v. *I. R.*, [1919] 2 K. B. 616, see p. 348.

[5] Cf. *Gaunt* v. *I. R.*, [1913] 3 K. B. 296, see p. 301. A reduction in emoluments connected with the Armed Forces is exempted from this rule: Officers and Employments Act, 1944, s. 5 (1), p. 684.

before the commencement of the year in which the tax is payable, or dies during that year, his representatives are still liable to pay the surtax.[6] Any adjustment on account of any such change, or death, which has taken place during the year of assessment will affect the amount payable, only by reducing the total income for that year to the same extent to which it has reduced the income from the particular source for the purposes of income tax at the standard rate.[7]

The surtax is at present charged on an ascending scale in respect of a "total income from all sources" exceeding £2,000; but there is no charge in respect of the first £2,000 of the income.[8] So that an individual who has a total income of, say, £2,300 is chargeable to surtax on the balance of £300 only.

As the surtax applies only to the income of "of an individual,"[9] companies (speaking generally) and other bodies of persons[10] are not liable to it; but a member of a partnership may be so, if his own total income exceeds the limit;[11] and, in certain cases, surtax may be assessed on the members of a company, in the name of the company.[12]

Surtax is included in calculating the amount of relief to be given in respect of Dominion income tax (which includes Dominion super-tax),[13] but the relief is given by way of reduction or repayment of income tax.[14] In those exceptional cases, however, in which this relief is given by way of reduction of income charged, the income is reduced for surtax purposes as well as for income tax proper.[15]

"Total Income from all Sources"—The general meaning of "total income from all sources" has been considered in the last chapter, and what has there been said applies to surtax assessments, as well as to income tax relief. But there are *further points, and there are certain other provisions, which* affect the total income as a basis of assessment for surtax; these will now be dealt with.[16] First, there is no allowance in respect of earned income, the full amount of which is included;[17] nor is there any deduction of a "personal allowance" such as is allowed for income tax proper by section 18 of the Finance

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[6] But if the rates of surtax for the year of assessment in which he dies are higher than the rates for the preceding year, these are to regulate the amount payable; any necessary adjustments are to be made Act of 1930, s. 26, see p. 527.

[7] See p. 298, note [13].

[8] Act of 1927, s. 38, see p. 541, read with No. 2 Act of 1940, s. 7, Act of 1945, s. 4; No. 2 Act of 1945, ss. 16, 15, pp. 695, 778.

[9] Act of 1927, s. 38 (1).

[10] See p. 259

[11] *Gaunt* v. *I. R.*, above.

[12] See p. 338.

[13] See pp. 19—23; and Supplement.

[14] Act of 1927, s. 42 (5), see p. 544.

[15] See p. 23.

[16] See Act of 1927, s. 38 (2), p. 542, which applies to the surtax such of the super-tax enactments as are not repealed by the Act of 1927. Several of the provisions repealed by that Act are re-enacted in s. 49.

[17] Finance Act, 1930, s. 15 (4), see p. 463.

Act, 1920;[18] nor any deduction for income tax already paid.[19] Secondly, where the individual is in the service of the Crown abroad, any sum which the Treasury may allow as necessary expenses of his office and for which an allowance has not already been made is to be excluded.[20] Thirdly, there is a specific exemption from surtax (as from income tax) for the incomes of High Commissioners, Agents-General, and their personal staffs, and of official agents for Dominions.[21]

Cases have arisen where it has been difficult to decide whether the income has been alienated, or whether it remains the income of the original owner, subject to some arrangement as to how it shall be applied. Thus, income from the funds included in a marriage settlement was impressed with an irrevocable trust to pay off the debts of the settlor, previously charged upon those funds; and that income was held not to form part of his total income.[22] That case has been distinguished by the English Court of Appeal, who held that where a lady, in addition to effecting a policy on her own life, gave certain shares to an assurance company as security for a loan, and the company were to apply the income (*inter alia*) in payment of premiums and reduction of the principal, the portions of the income so applied remained the income of the lady, and therefore formed part of the total income of the husband; the loan had been incurred in order to assist him.[23] It is submitted that there is no true distinction between the two cases, and that the principle of the Scottish decision was correct.

Income accumulated for the benefit of an infant may form part of the infant's total income year by year as it accrues;[24] again, it may have to be treated as income of the settlor under certain provisions of the Acts of 1936 and 1938.[25] But income accumulated under the trusts declared by the Trustee Act, 1925, s. 31 (2), is not income of the infant concerned.[26] The effect

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[18] See p. 10; *Davis* v. *I. R.*, [1923] 1 K. B. 370.

[19] *Davis* v. *I. R.*, above.

[20] Act of 1927, s. 42 (5).

[21] Act of 1923, s. 19, Act of 1925, s. 26, see pp. 519, 527.

[22] *I. R.* v. *Wemyss*, 1924 S. C. 284, 8 Tax C. 551, cf. also *Lord Hamilton of Dalzell* v. *I. R.*, p. 300.

[23] *I. R.* v. *Paterson* (1924), 9 Tax C. 163. In *Perkins' Exor.* v. *I. R.* (1928), 13 Tax C. 851, it was held that there had clearly been no alienation.

[24] *I. R.* v. *Pakenham*; *Cunningne* v. *I. R.*, [1923] 1 K. B. 113, *Stern* v. *I. R.* (1929), 15 Tax C. 148. In *I. R.* v. *Pakenham*, [1927] 1 K. B. at 609, Rowlatt, J., doubted the correctness of his earlier decision to the contrary (on a different settlement) in *I. R.* v. *Blackwell*, [1924] 2 K. B. 251; that decision had, indeed, been affirmed by the C. A., [1926] 1 K. B. 289, but upon other grounds. See also *Dale* v. *Mitcalfe* and *In re Fulford*, p. 295. In *I. R.* v. *Kidston* (1930), 20 Tax C. 693, conditions in a will were held to be suspensive, and the income not to have become that of the pupil. In *I. R.* v. *Abbey* (1933), 22 Tax C. 211, under a declaration of trust, income was held to be that of the infant daughter and not of the wife. See also *Hamilton-Russell's Exors.* v. *I. R.*, [1945] 1 All E. R. 474 (C. A.).

[25] See pp. 310 sqq.

[26] *Stanley* v. *I. R.*, [1944] 1 K. B. 255 (C. A.).

of dispositions of landed property on the total income of the beneficiary has already been considered.[27]

The income of funds subject to a valid trust for the reduction of the National Debt does not form part of the total income of the settlor.[28]

The additional provisions which enable surtax to be levied on the incomes of certain companies, which prevent the avoidance of surtax by sales *cum* dividend, and which afford relief in cases of purchase *cum* dividend, and in cases where the income received in one year represents more than is properly attributable to that year, must now be considered in some detail.

Surtax on the Income of Companies : What Companies are Affected—The provisions[29] for the levy of surtax on the income of companies apply to any company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies Acts, 1908—17, or 1929,[30] and to any body incorporated in any part of the United Kingdom under any enactment,[31] so long as the company is under the control of not more than five persons and is not a subsidiary company, or a company in which the public are substantially interested. A company, therefore, which is a "subsidiary company," or "a company in which the public are substantially interested," is not within the section, although it is under the control of five persons or less. A "subsidiary company" is a company which is controlled by another company or companies, by reason of their beneficial ownership of shares, but if the controlling company or any of the controlling companies is within the scope of the section, then the company thus controlled is not to be deemed a "subsidiary company"; in such a case, the controlled company is itself within the scope of the section, unless it is a company in which the public are substantially interested. Again, if one or more companies share the control of another company with individuals, the whole number of controlling persons not being more than five, the controlled company is not a "subsidiary company" and is within the scope of the section, unless the public are substantially interested.

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[27] See p. 299.

[28] Act of 1928, s. 30 (1), see p. 551.

[29] Act of 1922, s. 21 and First Sched., as amended by Act of 1927, s. 31 (1), (2), (3), (7), (8), see pp. 510, 515; Act of 1927, ss. 31 (4)—(6), 32, see pp. 537—8; Act of 1936, s. 19, see p. 581. This and the ensuing paragraphs are intended to give the effect of s. 21 of the Act of 1922, as thus amended.

[30] See definition in Act of 1929 (19 & 20 Geo. 5, c. 23), s. 380; Interpretation Act, 1889, s. 26 (1).

[31] This extension is made by Finance Act, 1936, s. 19 (3), see p. 581. The provisions in question are thus made applicable, amongst other bodies, to industrial and provident societies, subject to the modifications enacted in paras. (a), (b), (c) of that sub-section. And see note [36], below.

A company is not a "subsidiary company" merely because controlled by a foreign company.[32] Nor is it a subsidiary company if the company, or every one of the companies, in "control" of it is itself a nominee of any other person[33] (that is, of some individual or of some other company).

The company is deemed to be one in which the public are substantially interested if shares not entitled to a fixed rate of dividend (even though they may participate further in profits) to an extent of not less than 25 per cent. of the voting power have been unconditionally allotted to the public or acquired by the public, and are beneficially held by the public, at the end of the relevant period,[34] and have during that period been dealt in and been quoted in the official list of a stock exchange[35] in the United Kingdom: a company which is within the scope of the section is not for this purpose to be reckoned among "the public."

The description of "control" is contained in the Finance Act, 1936.[36] First (paragraph (a)), if five or fewer persons together exercise, or are able to exercise, or are entitled to acquire, direct or indirect control over the company's affairs (and in particular, if they possess, or are entitled to acquire, the greater part of the share capital or voting power), the company is deemed to be controlled by that number—note that the whole of the share capital is here referred to, and not merely that which is issued. Secondly (paragraph (b)), it is enough to place the "control" in their hands, if five or fewer persons together possess either the greater part of the *issued* share capital, or such part of it as would entitle them to receive the greater part of the distribution if the whole of the income of the company were in fact distributed to the members; what is meant by "income" in this connection is left unexplained. Thirdly (paragraph (c)), if by applying the provisions of section 21 of the Act of 1922 to a company which (apart from the matter of control) would be within that section, more than half its income could be "finally apportioned" among not more than five persons, the "control" is established; here "income" must clearly be ascertained in the same way as for purposes of apportionment under that section, and there must be added any income which could be "finally apportioned" under that

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[32] *Barrowford Holdings, Ltd.* v. *I. R.*, [1939] 2 K. B. 607; affd. in C. A., [1940] 1 K. B. 81.

[33] Act of 1937, s. 14 (1), see p. 592. The above is the best suggestion the writer is able to make as to the effect of this provision.

[34] See p. 303.

[35] A niece of the principal shareholder may yet be one of the public; and mention in a list of "other business done" published officially is sufficient: *Falcon S. N. Co.* v. *I. R.*, [1941] 2 K. B. 194 (C. A.).

[36] S. 19 (1) (a), (b), (c), as amended, see p. 581; and see next note. The enactments of s. 19 are applicable to a company already in liquidation when the Act was passed: *Kastamonia Copper Syndicate, Ltd.* v. *I. R.* (1938), 21 Tax C. 583.

section to the company as a member of another company or companies answering to a similar description.[37]

The number of persons is to be calculated[38] by treating relatives of one another as a single person, and by including nominees of a person with him as a single person; "relative" means a husband or wife, ancestor or lineal descendant, brother or sister—but does not include a cousin unless he or she is the husband or the wife; an elaborate paragraph shows what is meant by a nominee. Partners, again, are to be reckoned as a single person, and so are persons interested in any shares or obligations of the company which are subject to any trust or which are part of the estate of a deceased person; each separate trust or estate must, of course, be taken by itself.[39]

Object of the Provisions.—The object of these provisions is to enable the Special Commissioners—if any company such as is above described appears to them not to have distributed (within a reasonable time after the end of any year or period for which accounts are made up) a reasonable part of its actual income from all sources for that year or period, to its members, either as dividend or in such other form as will make them liable to include the amount received in a return of total income for purpose of surtax[40]—to give a direction which will nevertheless enable surtax to be levied on the amount that has not been so distributed.[40] It is for the Revenue to establish that the company has acted unreasonably in withholding distribution; and this onus cannot be shifted on to the company.[41] The actual income of the company is to be calculated as for income tax,[42] except that the profits of the year or other period in question are to be taken, and not those of the preceding year.[43] It is immaterial whether the failure to distribute a reasonable

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[37] The above appears to be the effect of para. (c) as substituted by s. 13 (1) of the Act of 1939, together with sub-ss. 3, 4, see p. 581. Assessments, etc., rendered incorrect by this substitution may be reopened: sub-s. 5.

[38] Act of 1936, s. 19 (2), see p. 581. "Person," here as elsewhere, includes a company or other incorporated body.

[39] See "Dividends: Bonus Shares," etc., in Chap. 14, pp. 301—304. A dividend which is paid on condition that it shall at once be repaid to the company has not been "distributed": *I. R.* v. *Marbob, Ltd.*, [1939] 2 K. B. 872.

[40] Act of 1922, s. 21 (1), see p. 510. It is immaterial that the members, or some of them, are corporate bodies or trustees, and therefore not liable to surtax: *Boonwood Investments, Ltd.* v. *I. R.*, [1942] 1 All E. R. 290 (C. A.); *Penang, etc., Investment Trust, Ltd* v. *I. R.*, [1943] A. C. 486.

[41] *Fattorini* v. *I. R.*, [1942] A. C. 643.

[42] *Ibid.* In the case of a private company whose object was to hold endowment policies, the interest on National War Bonds transferred to the company as premiums for the policies formed (after deducting expenses of management) "its actual income" within the meaning of this provision: *Endowment Co., Ltd.* v. *I. R.* (1929), 14 Tax C. 753.

[43] First Sched., para. 6, see p. 510. If a six-months' account is afterwards incorporated in a twelve-months' account, a direction may be given on the basis of the latter, although the company is not brought within the scope of s. 21 (by the subsequent Act of 1936, see p. 310) until after the first six months have expired: *Duo Trust, Ltd.* v. *I. R.* (1939), 22 Tax C. 136.

part of the income is due to a desire to avoid surtax, or to any other cause;[44] or even to the existence of an article which prevents any distribution (in the absence of a special resolution) until a mortgage debt has been discharged.[45] A contractual obligation to dispose otherwise of the income does not make it unlawful to distribute a dividend, but may make it reasonable to refrain from distribution.[46] On the other hand, if a company sells its business by an agreement taking effect retrospectively for a period, and has made profits during that period, which it has not distributed, a direction may be given.[47] If a dividend is declared in connection with the accounts of the year or period, the time with relation to which the reasonableness of the distribution must be considered is the time of the declaration; if there is no such declaration, it is a reasonable time after the expiration of the year or period.[48]

The Special Commissioners are directed,[49] in determining whether a reasonable part of the income has been distributed, to have regard, not only to the current requirements of the business, but to what is necessary or advisable for its maintenance and development But any sum expended or applied (in any form) out of the income[50] towards payment for the first substantial business, undertaking or property of the company is to be regarded as income available for distribution, unless this is done in pursuance of an obligation entered into by the company before August 4, 1914, in which case it is in the discretion of the Commissioners whether it shall be so regarded or not. Income available for distribution is also to include any income expended, or applied in redemption of any share or loan capital or debt (including any premium on any of these) "issued or incurred otherwise than for adequate consideration"; an explanation is provided of the phrase quoted. Any income expended or applied in pursuance or in consequence of any fictitious or artificial transaction is also to be regarded as income available for distribution. The expenditure or application may have been carried out, or only intended; and "application" includes replacement of money applied or to be applied. But

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[44] *D. Cavine & Sons, Ltd.* v. *I. R.*, 1926 S. C. 870; 11 Tax C. 90. As regards a failure to distribute, followed by liquidation, see *A. Collier, Ltd* v. *I. R.*, see p. 306; *A. Drew & Sons, Ltd.* v. *I. R.*, *ibid.*

[45] *Colville Estate, Ltd.* v. *I. R.*, [1930] 2 K. B. 292.

[46] *Fatterina* v. *I. R.*, above, where the decision, but not the reasoning, in *Glenat Kid, Ltd.* v. *I. R.* (1930), 15 Tax C. 445, was approved. As to action by a company to ascertain its position, see p. 340.

[47] *John White's Trust, Ltd. (in Liqn.)* v. *I. R.* (1927), 21 Tax C. 291.

[48] *Montague Burton, Ltd.* v. *I. R.* (1935), 20 Tax C. 48, *per* Rowlatt, L.J., at 72; affirmed in H. L. (1936), *ibid.*, 77.

[49] S. 21 (1), first proviso, and paragraph and proviso subsequent thereto, with additions made by Act of 1936, s. 19 (4), see pp. 510—11. See also the case last cited.

[50] For an example, see *Morris Securities, Ltd.* v. *I. R.* (1940), 23 Tax C. 625.

the fact that any sum is, or is to be, expended or applied as above described is not by itself sufficient to make the section enforceable; it may be that, even when any such sum is included in the available income, the company may still be found to have distributed a reasonable part of the whole, in view of maintenance and development, as well as of current requirements.

The "members" of the company for the purpose of the section include not only all who have a share or interest in the capital of the company, but also any person who has a share or interest in its profits or income, *e.g.*, a director who is entitled as such to a percentage of the profits available for distribution.[51] Where shares are held by trustees on trust to pay the income therefrom to beneficiaries for their lives, the beneficiaries are "members."[52]

Method of Enforcement: Appeal against "Direction"—The Special Commissioners may bring these provisions into play in one of two ways. They may either commence by giving a notice in writing to any company, which appears to them to be within the description already discussed,[53] requiring a statement of the actual income for any year or other period for which the company's accounts are made up, together with a copy of those accounts, and "such particulars as the Commissioners may reasonably require as to the income of the company" and the manner in which it has been dealt with; and also names and addresses and particulars of interest of all "members" of the company;[54] together with particulars as to bearer securities and persons to whom they have been issued.[55] Or, the Commissioners may proceed, without such previous requirement, to direct (by notice in writing to the company) that the actual income of the company from all sources for any year or other period for which accounts have been made up shall, for purposes of assessment to super-tax, be deemed to be the income of the members.[56] In cases where the company has of its own motion forwarded accounts to the Special Commissioners, the powers of the Commissioners to take such action of either kind, and the time within which action may be taken, are limited.[57]

In either case the directors of the company may, within twenty-eight days of the issue of the notice or the giving of the direction, send to the Special Commissioners a statutory declaration stating that there has not been and will not be

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[51] Act of 1922, s. 21 (7), see p. 512; *I. R.* v. *Tring Investments, Ltd.*, [1939] 2 K. B. 503 (C. A.).

[52] *A. Drew & Sons, Ltd.*, v. *I. R.* (1932), 17 Tax C. 150, see p. 337. [53] See p. 331.

[54] Act of 1922, First Sched., para. 4, see p. 515. As to "members," see note [51].

[55] Act of 1930, s. 18 (3), see p. 638; sub-ss. 1, 2 are also applicable to such companies among other persons, and are expanded for this purpose by sub-s. 6 (a).

[56] Act of 1922, s. 21 (1), see p. 510. [57] Act of 1926, s. 18 (3), see p. 341.

any avoidance of super-tax by reason of a failure to distribute a reasonable part of the income, and stating the relevant circumstances. If this is done, the Special Commissioners are not to take any further action, unless they see reason to the contrary. If they do see such reason, they are to send a certificate to that effect, with the statutory declaration, to the Board of Referees (who are appointed for this and other purposes), as well as copies to the Commissioners of Inland Revenue; the latter send a counter-statement within twenty-eight days: the Board of Referees are to consider all three documents and decide whether there is a *prima facie* case. Their determination on this point is final and conclusive; if the Board decide that there is not a *prima facie* case, no further action can be taken; if they decide that there is, the original notice or direction (given by the Special Commissioners) is considered as having been given on the date when notice of the Board's determination is given to the company.[58]

Where the proceedings are to continue, and a notice calling for a statement of actual income has been issued, and the company fails or refuses to deliver a statement, or renders a statement with which the Special Commissioners are not satisfied, they may make their own estimate.[59] Upon consideration of the actual income, as so estimated, or as shown in the statement rendered, they may give a "direction" as above described, if they have not already done so.[60]

If the company are aggrieved by a "direction" (whether given after the issue of a notice requiring a statement, or without the issue of such a notice), they may give notice of appeal to the Special Commissioners against the direction within twenty-one days after the date of the notice by which the "direction" is given.[61] Either the company, or the Commissioners of Inland Revenue, if dissatisfied with the result of this appeal, may within twenty-one days appeal further to the Board of Referees, who must rehear the appeal.[62] Either the Special Commissioners or the Board of Referees may on their determination of the appeal be required by either party to state a case for the opinion of the High Court on a point of law.[63] The question whether a reasonable part of the income has been distributed is a question of fact, and the decision is not open to review, if there was evidence upon which it could be arrived at.[64]

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[58] Act of 1922, First Sched., para. 5, see p. 515, as substituted by Act of 1927, s. 31 (7).
[59] Act of 1922, First Sched., para. 7.
[60] S. 21 (1), see p. 510.
[61] First Sched., para. 1, see p. 515.
[62] First Sched., para. 2.
[63] *D. Carlow & Sons, Ltd.* v. *I. R.*, 1926 S. C. 870; 11 Tax C. 96. As to cases stated, see Chap. 18.
[64] *London and Northern Estates Co., Ltd.* v. *I. R.* (1931), 16 Tax C. 128; *Montague Burton, Ltd.* v. *I. R.*, see p. 324; *Aldwarke Co., Ltd.* v. *I. R.* (1933), 18 Tax C. 125; *Carnarvon Estate Co., Ltd.* v. *I. R.* (1935), 19 Tax C. 643; *John White's Trust, Ltd.* v. *I. R.* (1937), 21 Tax C. 391; see p. 324.

It will be observed that, where the matter has been already brought before the Board of Referees by means of a statutory declaration as above described, and that Board has determined that there is a *prima facie* case, there is still a right of appeal to the Special Commissioners (and from them to the Board of Referees) against a direction previously given; the notice of appeal to the Special Commissioners must be given within twenty-one days from the receipt of notice of the Board's determination.[65]

Any application to treat the income to be apportioned as received on a date other than that to which the company's accounts have been made up must be made within the time limited for appealing against the direction.[66]

Apportionment: Appeal against Apportionment—When a "direction" has been given, and is not appealed against, or is confirmed on appeal, the actual income of the company (as ascertained for purposes of the "direction," see above) is, for the year or other period specified in the direction, deemed to be income of the "members";[67] that is to say, the whole of the actual income, for there is no power or duty in the Commissioners to determine what portion of that income it would have been reasonable to distribute.[68] The Special Commissioners proceed to apportion that income among the members "in accordance with" their "respective interests",[69] the members among whom the income may be apportioned include corporate bodies and trustees, although these are not liable to surtax;[70] but an apportionment may with equal propriety be made upon the beneficiaries instead of the trustees.[71] Persons who have ceased to be members before the end of the year or other period may also be included;[72] so may preference shareholders or others, "who according to their interests in the company own the real and paramount beneficial interest in the fund in question."[73]

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[65] Act of 1922, First Sched., para. 1, read with para. 5 (f), see pp. 515, 516.
[66] See "Effect of Apportionment," below.
[67] Act of 1922, s. 21 (1), (7), see pp. 510, 512.
[68] *Colville Estate, Ltd.* v. *I. R.*, [1930] 2 K. B. 393. See also *D. Carlaw, Ltd.* v. *I. R.*, above. But see the observations of Lord ATKIN in *Fattorini* v *I. R.*, [1942] A. C. 655.
[69] S. 21 (1); First Sched., para. 8. The amount apportioned to a member is a part of his "income as computed for the purpose of the Income Tax Acts" in a deed of covenant to pay over a fraction of such income: *I. R.* v. *Payton*, [1941] 1 K. B. 363 (C. A.); but is not within the phrase "total income from all sources" in such a deed, where the Income Tax Acts are not specified: *Normanton (Earl)* v. *I. R.* (1939), 23 Tax C. 403 (C. A.).
[70] *Roomwood Investments, Ltd.* v. *I. R.*, [1942] 1 K. B. 420 (C. A.).
[71] *Alex. Drew & Sons, Ltd.* v. *I. R.* (1932), 17 Tax C. 140, see p. 335, and see p. 344, note [86].
[72] *Fendock Investment Trust* v. *I. R.*, [1945] 2 All E. R. 140 (H. L.).
[73] *F. P. H. Trust (in Liquidation)* v. *I. R.*, [1946] A. C. 38.

Notice of the apportionment is to be given by serving on the company a statement showing the amount of the actual income adopted, and the amount apportioned to each member, or to each class of shares, as the Special Commissioners think fit.[74] The company may appeal by giving notice within twenty-one days after the date of the above notice, and may apparently challenge either the amount of actual income or the amounts apportioned, or both; there is power to require a case to be stated.[75]

Effect of Apportionment—That part of the company's income for the account year or other period, which is apportioned to each member, less any amount already distributed to him by the company so as to attract a liability to surtax, is to be assessed and charged to surtax.[76] This sum is deemed to have been received by the member on the date to which the accounts were made up, and is to be included for purposes of surtax in his total income for the year in which that date falls. But if application has been made by the company during the time allowed for appealing against the *direction*[77]—not the apportionment—the Special Commissioners may treat the income as if it had been received on such date as they determine to be just, having regard to the dates when the company itself has made distributions of income (*e.g.*, has declared a dividend), and so as to avoid as far as possible the inclusion of more than one year's income in a single year's surtax assessment.[78] The amount apportioned to each member is taxable to surtax at the highest rate to which the amount of that member's "total income" makes him liable;[79] if it does not bring his total income above £2,000, he is, of course, not liable to pay surtax in respect of it. A notice of charge to surtax must be served on the member;[80] and the Special Commissioners may require an amended surtax return from him.[81] If within twenty-eight days from the date of the notice of charge the member does not "elect to pay" the tax, a notice of charge is to be served on the company, and the surtax becomes payable by the company;[82] but always according to the rate of tax applicable to the highest part of the individual member's income. If he elects to pay

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[74] First Sched., para. 10, see p. 517.
[75] *Ibid.*; see Chap. 18.
[76] S. 21 (1), see p. 510. Relief under s. 24 or s. 25 of the Act of 1927 (see pp. 314, 315) is not applicable: *Troy Securities, Ltd.* v. *I. R.* (1942), 167 L. T. 126.
[77] See p. 335.
[78] Act of 1922, First Sched., para. 9, see p. 517, as substituted by Act of 1927, s. 31 (8).
[79] First Sched., para. 8, as amended; see p. 328, and Act of 1928, s. 15 (1) (b).
[80] Act of 1922, s. 21 (3), see p. 511.
[81] First Sched., para. 8, see p. 516.
[82] S. 21 (3). If the company fails to pay within the time limited by s. 19 (5) of the Act of 1926, see p. 582, the amount due may also be recovered from the member.

the tax himself, the election is presumably to be made by letter sent to the Special Commissioners so as to reach them within the time above stated. The tax may also be recovered from the company, if any member who has so elected fails to pay within the time limited.[83] Provision is made against surtax being charged a second time in respect of the income when it is subsequently distributed by the company.[84]

Winding up—In applying these provisions to a company which is within the description above considered,[85] and for the winding up of which an order has been made or a resolution passed, certain additional directions are to be followed.[86] As regards the broken period between the date to which the accounts for the last year or other account period have been made up and the date of the winding-up order or resolution—and also as regards the next preceding year or any account period or periods which ended within that year—section 21 (1) of the Act of 1922 is to apply as if the words "within a reasonable time" were omitted; the effect of this omission has been held to be that the Special Commissioners have only to see whether any part of the company's total income has been left undistributed, and have no discretion to inquire whether it was reasonable to refrain from distributing the whole.[87] This decision would appear to proceed upon the view that the omission of the words quoted involves reading section 21 (1) as if the words "a reasonable part of" which appear before "its actual income" later in the sub-section were also omitted. It is not open to a company (in respect of the broken period above described) to contend that as the income of that period will be distributed as assets in the winding up, it should not be apportioned to the members and charged with surtax.[88]

The income apportioned to a member for the broken period is deemed to have been received by him on the date of the winding-up order or resolution, and it, therefore, forms part of his total income for purposes of surtax in the year in which that date occurs.[89]

Where the company is in liquidation, any of the notices referred to in the above pages that may be served on the

[83] That is, by January 1 next after the end of the year of assessment, or within twenty-eight days of the date of election, whichever is later: Act of 1922, s. 21 (3), proviso, read with Act of 1927, s. 42 (1), see p. 544. See also *In re Alex. Drew, Ltd.*, p. 340.

[84] Act of 1922, s. 21 (4), see p. 510. See also Act of 1927, s. 34, and *Gollin* v. *I. R.*, pp. 345, 347.

[85] S. 21 (6); see p. 331.

[86] Act of 1927, s. 31 (4)—(6), see p. 537.

[87] *Collier* v. *I. R.*, [1933] 1 K. B. 488.

[88] S. 31 (4); *A. Drew & Sons, Ltd.* v. *I. R.* (1932), 17 Tax C. 140, see p. 337; the decision in *I. R.* v. *Burrell*, [1924] 2 K. B. 52 (see p. 304), has no application here.

[89] S. 31 (6), see p. 538. He cannot appeal on this ground against his surtax assessment: *Burston* v. *I. R.* (No. 2) (1945), 61 T. L. R. 391.

company is to be served on the liquidator; he is responsible for furnishing statements, etc., and is entitled to appeal and so on in place of the company; and if any member elects not to pay the surtax charged on him, or fails to pay after electing to do so, the liquidator becomes responsible for the payment.[90] He is not to deduct the total sum due before ascertaining the divisible assets, but to deduct the particular amount of surtax charged on each member from the amount which would otherwise be payable to that member.[91] If this has not been done before the distribution, the Court will order persons settled on the list of contributories to refund to the company's liquidation account the amounts respectively charged on them.[92]

Shareholding, etc., Companies—Section 32 of the Act of 1927 provides for the case where a member of a company whose income has been apportioned under section 21 of the Act of 1922 (as amended) is itself a company; and for the further case where a member of that second company is itself a company, and so on. The directions of the substantive section are applied, *mutatis mutandis*, to these cases. The surtax is to be assessed on the members of each of these companies in the name of the first company, not of the second or any subsequent company; and the date on which the income is deemed to have been received (for purposes of surtax) is the date fixed for this purpose with regard to the first company.[93] All the provisions relating to apportionments are applied[94] to any sub-apportionments or series of sub-apportionments made under section 32 of the Act of 1927.

A company may be a "member" of another company if it has a share or interest in the capital or profits or income of the latter.[95]

Action by a Company to Ascertain its Position—A company to which section 21 of the Act of 1922[96] applies, may of its own motion forward to the Special Commissioners a copy of the accounts for any year or period after they have been adopted at a general meeting with a copy of the report (if any) and with any further information they may think fit to forward.[97] Not later than twenty-eight days after receipt, the Special Commissioners may call for further particulars.[98] The Commissioners

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[90] S. 31 (5); see "Effect of Apportionment," p. 338. S. 19 (5) of the Act of 1936 is applicable in this case also: see note [82].

[91] *In re Alex. Drew, Ltd.*, [1935] 1 Ch. 93. [92] *In re Aidall, Ltd.*, [1933] Ch. 323.

[93] As to these dates, see p. 338, and see "Winding up," above.

[94] Act of 1939, s. 13 (3), (4), p. 621.

[95] See definition in Act of 1922, s. 21 (7), p. 512.

[96] See "What Companies are Affected," p. 331.

[97] Act of 1922, s. 18 (1), see p. 550 [98] Sub-s. 2.

may (within three months after receiving the accounts, etc., which the company have voluntarily furnished, or, if they have called for further particulars, within three months after these have been received, or after the time for furnishing them has expired) either give a direction, or intimate that they intend to take further action under section 21 (as amended) for that year or period. If they have not within that time given a direction or intimation, the Commissioners have no power to take any further action in respect of the year or period.[a] And if such an intimation is given (without a direction being given within the time above mentioned), the time for giving a notice requiring a statement of actual income for that year or period is limited to six months after the date of the intimation; they cannot afterwards give a direction that the company's income is to be deemed to be income of the members, unless they have given such a notice within the time thus limited.[1] But the Commissioners are not bound by these limitations, unless they have been furnished by the company under section 18 with the accounts approved in general meeting.[2]

Investment Companies—The provisions for surtax on the income of companies dealt with in the preceding pages have been substantially extended[3] as regards "investment companies," that is, companies whose income consists *mainly* of investment income, by which is meant income which in the hands of an individual would not be "earned income";[4] moreover, if a company is a member of another company whose income has been apportioned[5] under section 21 of the Act of 1922, the income so apportioned to it is to be treated as "investment income."

The provisions of section 20 of the Act of 1936 which affect the "investment companies" above described are largely dependent for their operation on the definition of a "loan creditor."[6] This expression means a creditor in respect of any redeemable loan capital issued; or in respect of any debt incurred—(a) for any money borrowed or capital assets acquired by the company, (b) for any right to receive income created in favour of the company, or (c) for consideration of substantially

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[a] Sub-s. 3 (a), as interpreted by C. A. in *Star Entertainments, Ltd.* v. *I. R.*, [1942] 2 All E. R. 33. But that paragraph does not mention a "direction," and imposes no time limit except in connection with an "intimation." [1] Sub-s. 3 (b).

[2] *F. P. H. Trust (in Liquidation)* v. *I. R.*, [1946] A. C. 38.

[3] Act of 1936, s. 20, see p. 582. Power to require (under penalty) any particulars thought necessary in relation to "investment companies" is given by Act of 1939, s. 16, see p. 626; they are also among the persons and the companies from whom particulars may be required under s. 18 (1), (2) and (3) of the same Act: see sub-s. 6.

[4] As defined in Act of 1918, s. 14 (3); see p. 12.

[5] See p. 337. The same rule applies in case of a "sub-apportionment," Act of 1939, s. 13 (3), (4), see pp. 621—2; as to re-opening assessments, see sub-s. 5.

[6] Act of 1936, s. 20 (7), see p. 594.

less value to the company (at the time when the debt was incurred) than the amount of the debt, including any premium. But the definition does not include a banker, as regards money lent to the company in the ordinary course of his business.[7] The definition would appear to include a person in such a position as that of the annuitant in *Inland Revenue* v. *Gavin*.[8]

To the circumstances which may constitute the control of not more than five persons under section 21 of the Act of 1922, there is added, in the case of an "investment company," that the company shall be deemed to be under such control if any five or fewer persons would, in a winding up, be entitled as members or loan creditors to more than half of the assets available for distribution to these classes.[9] When it is established that a company is an "investment company" and is, for the reason last stated or for any other, within the scope of that section, the amount available for distribution[10] is (regardless of any requirements for current purposes or for development, etc.) to include any sum expended, or applied, or available, out of the "income of the company"—the term here means the aggregate amount of income from all sources[11]—towards the redemption, repayment or discharge of any loan capital or debt issued or incurred by the company to a loan creditor.[12]

In relation to an investment company, effect is given to the procedure of the Act of 1922 in a specially drastic manner. Unless such a company has *only* "estate or trading income," a direction must be given in respect of each year of assessment, whether the company has distributed a reasonable part of its income or not: no discretion is left to the Special Commissioners.[13] This applies to the whole of the "actual income from all sources," or to any part which does not consist of "estate or trading income," where the company has other income besides what is so described.[14] This expression means[15] income chargeable under Schedule A or Schedule B,[16] income arising from ownership or occupation of land which is chargeable under Schedule D[17] (including income from furnished lettings), and any income which would in the hands of an individual be

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[7] *Ibid.*, proviso.

[8] See p. 307; or as that of the appellants in *I. R.* v. *Sansom* and *I. R.* v. *Doncaster*, see pp. 303, 304.

[9] Sub-s. 3.

[10] See p. 334.

[11] *F. P. H. Trust, Ltd.* v. *I. R.* (1944), see p. 343.

[12] Sub-s. 2, read with sub-s. 7. Premiums are to be included.

[13] Act of 1939, s. 14 (1), (3), see p. 622; contrast p. 334.

[14] Sub-s. 4; provisos (i), (ii) may become important. Some relief as to expenses of maintenance, etc. (see pp. 33, 34) is given by sub-s. 5.

[15] Sub-s. 8.

[16] See Chaps. 2 and 3.

[17] See pp. 126 *sqq.*; p. 218 (foreign rents); p. 229.

earned income;[18] income apportioned as a member of another company is excepted. The above provisions, however, are not to apply if the company satisfies the Commissioners that it exists wholly or mainly to carry on a trade, or to co-ordinate the administration of trading companies which it controls.[19]

On the other hand, if a company has "estate or trading income" (whether this forms the whole of the company's actual income or only a part) the Special Commissioners have a discretion, if it appears to them that a reasonable part of *that* income has not been distributed in a year of assessment, to disregard the period of the company's accounts (if any) and to give a direction relating to that year.[20] In considering whether such a direction should be given, all the income is to be deemed available for distribution as soon as it became due and payable to the company;[21] it would appear that, if there has been a default in the payment of interest to the company, though it was "due and payable," the interest unpaid cannot be regarded as "actual income."

If there is a winding-up, the period between the last year of assessment and the date of the winding-up order or resolution must as to other income,[22] and may as to "estate or trading income,"[23] be treated as a year of assessment. Other modifications of the general provisions of section 21 of the Act of 1922 are also applicable in either case.[24]

In every case of the winding-up of an "investment company" (whatever the nature of its income) the "actual income of the company from all sources" after the date of the order or resolution is deemed to be the income of the members (and of the loan creditors in the cases where they are to be included in the apportionment) and is to be apportioned among them.[25] No discretion is left to the Special Commissioners in the matter; they are to serve notice on the liquidator specifying the year or period affected.[26]

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[18] "Investment income" within s. 20 of the Act of 1936 means (sub-s. 1) any income which is not "earned income", subject to the addition of any apportioned income (proviso); see pp. 12, 338.

[19] Act of 1939, s. 14 (7).

[20] Act of 1937, s. 14 (2), (4), see p. 593, which must now be read subject to s. 14 of the Act of 1939, considered above: see sub-s. 4 (b) of the latter. If they do not decide to act under the Act of 1937, in the cases to which s. 14 (2) still applies, the Special Commissioners may, of course, deal with the company's accounting periods under the general provisions of the Act of 1922. A company has no "actual income" if its trading loss exceeds its income from investments: *F. P. H. Trust, Ltd.* v. *I. R.*, [1944] 1 All E. R. 653 (H. L.), the period over which enquiry is to be made was considered in that case.

[21] Act of 1937, s. 14 (2) (b).

[22] Act of 1939, s. 14 (6).

[23] Act of 1937, s. 14 (2) (c) (i), (ii); here the Commissioners have a further choice as to the period they will consider.

[24] See Act of 1937, s. 14 (2) (d) and Third Sched.; Act of 1939, s. 14 (2), (9).

[25] Act of 1936, s. 20 (6), read with sub-s. 4 (a), see p. 583. The provisions of s. 14 of the Act of 1939 are then no longer applicable, see sub-s. 6. As to loan creditors, see below.

[26] Act of 1936, s. 20 (6) (b), (c); subject to s. 20 (6), the provisions of s. 31 (4)—(6) of the Act of 1927 (see p. 339) are also applicable.

Investment Companies : Apportionment—As to the apportionment of the income of an "investment company" for surtax purposes, very wide powers have been given to the Special Commissioners by successive Acts, in addition to those which they possess under section 21 of the Act of 1922. Thus, where five or fewer persons would be entitled as loan creditors (not as members) to receive, in a winding up, more than half the assets available for distribution among both members and loan creditors, provision is made for including all the loan creditors in the apportionment made under section 21, to the extent laid down; [27] cases where the loan creditor is a nominee or trustee, as to the whole or a part of his ostensible interest, are dealt with by including the beneficiary also in the apportionment.[28] The apportionment among members may, at the discretion of the Special Commissioners, be made in proportion to their interests in the whole of the assets available in the event of a winding up.[29] This discretion is not limited in any way: and an apportionment may be made to a trustee and followed up by an assessment on the beneficiary.[30]

Further, the Special Commissioners are also enabled to treat as a member of the "investment company" any person who is, or is likely to be, able to secure that income or assets will be applied directly or indirectly for his benefit.[31] They may also apportion to such a person, or to a member who is, or is likely to be, able to obtain more than the share of the income or assets than his interest in the company would give him if the law applicable to the company were strictly applied, such part of the income as they think appropriate.[32] Other members may have their total income reduced in consequence.[33] When an apportionment is made under this section, the appeal provisions relating to a "direction" are applicable, and not those relating

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[27] S. 20 (4) (a), (b), read with Act of 1922, First Sched., para. 8, see pp. 337, 338. The amount which can be apportioned to a loan creditor under that provision is limited by the actual income of the company (without any addition for income tax), and by the amount which under his contract with the company is due to him for the same year or period: *I. R.* v. *Kered, Ltd.*, [1939] 1 K. B. 402 (C. A.).

[28] *Ibid.*, provisos (i), (ii). The words "nominee" and "trustee" are not used, but the very wide definition of "settlement" in s. 21 (9) (b) is incorporated. see p. 552. Disclosure can be compelled under sub-s. 5, read with Act of 1922, First Sched. para. 11, see p. 517.

[29] Act of 1937, s. 14 (3), see p. 593; *I. R.* v. *Trustees Investments, Ltd.*, [1939] 2 K. B. 503 (C. A.); *I. R.* v. *Fred's Securities, Ltd.*, *id.* 734, is extended to "sub-apportionments" by Act of 1939, s 13 (2), (4), see p. 621.

[30] *Penang etc. Trust Ltd.* v. *I. R.*, [1943] A. C. 486.

[31] Act of 1939, s. 15 (1), see p. 624: explanations of the terms used are given in sub-ss. (3), (6), a trustee is "able to secure . . .", though he can only do so by a breach of trust, if this is reasonably certain to be condoned: *I. R.* v. *L. B. Holdings, Ltd.*, [1944] 1 All E. R. 308 (C. A.); *Chamberlain* v. *I. R.* (No. 2), [1945] 2 All E. R. 35 (C. A.); but not if condonation is merely possible: *Clark* v. *I. R.* (1944), 23 A. T. C. 87 (C. A.); *Heddon, etc., Ltd.* v. *I. R.*, *ibid.* 130. S. 15 applies to sub-apportionments: sub-s. 6 (d); see note [29].

[32] Sub-s. 2; see last note. The application of the decision in *I. R.* v. *Kered, Ltd.*, above, appears to be prevented.

[33] Sub-s. 4.

to apportionments in general; so that there may be a rehearing by the Board of Referees.[34] Where an apportionment is made of the profits of one year, and these profits are distributed by the company in the next year, relief from a double levy of tax may be claimed.[35]

An apportionment of the whole income of an investment company to a settlor may not afford ground for an order varying the trusts of the settlement.[36]

Sales *cum* Dividend—Section 33 of the Act of 1927 contains provisions designed " for preventing the avoidance of super-tax by sales *cum* dividend, etc.," as the marginal note conveniently describes them; but the expression " sales *cum* dividend " does not appear in the section itself. These provisions apply generally to stocks or securities entitled to interest or dividend which is payable at a fixed rate only and which is not dependent on the earnings of a company, by whatever mode these have been sold or dealt in; but as regards other stocks and securities, and as regards shares, they apply only in cases where the transactions concerned have not been effected through a stock exchange in the United Kingdom and by a transfer which has borne duty at 10*s.* for every £50, or £1 per cent.[37] The section applies only to individuals, and does not affect companies or other bodies.

The income of the stock, etc., concerned is deemed to have accrued from day to day during any stated period in respect of which it is payable, or (if there is no such period) during the twelve months before it was declared payable, or any shorter period since the last previous declaration of a final dividend.[38] The income is assumed to be apportioned to the individual according to the time for which he is owner of the stock, etc., and he is made liable for surtax as if he had received that sum; but he is allowed a certain margin, and he is so liable only if by the sales or other dealings he has avoided (or would but for this section avoid) more than 10 per cent. of the surtax for any year, which he would have paid if the income had in fact accrued from day to day. And no assessment is to be made under this section if the individual proves that the avoidance was exceptional and not systematic, *and* (even though it was not " systematic ") that there was no such avoidance in any

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[34] Sub-s. 5; see p. 336. An appeal will not lie against the surtax assessment: *Burston v. I. R.* (No. 2) (1945), 61 T. L. R. 391.

[35] Under Act of 1927, s. 34; *Gollin v. I. R.*, see p. 347.

[36] *Re Basden's Trusts*, [1943] 2 All E. R. 11.

[37] Act of 1927, s. 33 (7), see p. 540; see also Stamp Act, 1891, First Sched., " Conveyance on Sale," as amended by Finance Act, 1920, s. 36 (1). And see p. 328, note 1

[38] Act of 1927, s. 36 (1), see p. 541.

of the three preceding years.[39] Note that the 10 per cent. is calculated, not on the amount assessable, but on the tax payable in view of the graduated scale of surtax;[40] and that, if more than 10 per cent. of the tax has been avoided, the individual is assessable on the whole amount of the income ascertained as above.

The section is brought into play by the service of a notice by the Special Commissioners requiring from the individual concerned a statement of stocks, securities or shares to which the section applies as above described, in which (during a specified period) he has had a beneficial interest, and from which he derived no income, or less than the income he would have received if it had accrued from day to day. Not less than twenty-eight days must be allowed in the notice, for furnishing the statement; it must be furnished (under penalties), even though an assessment to surtax has already been made for the relevant year. If it is not furnished, or if the statement is not satisfactory, the Special Commissioners may make their own estimate.[41]

Purchases *cum* Dividend—Where the sale or transfer of any assets to an individual has brought the surtax payable by him to more than 10 per cent. above the amount that would have been payable for any year if the income from those assets (and from any other assets sold or transferred by him) were deemed to have accrued from day to day, application may be made to have the surtax assessment calculated as if the income from the assets bought, etc., and from those sold, etc., had both accrued from day to day.[42] This section applies to all assets of any kind. The income is deemed to have accrued from day to day during the period indicated in section 36 (1).[43]

In order to obtain relief under section 35, the individual must make application, either in making his surtax return for any year, or within twenty-eight days, after receiving notice of assessment (or additional assessment) to surtax for any year.[44] The existence of the circumstances above indicated must be proved to the satisfaction of the Special Commissioners.[45]

If the application is successful, the individual's total income, so far as the assets sold or transferred to him are concerned, is reduced for the purposes of surtax to the income he would have received from the assets during the period after that sale

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[39] S. 33 (3), (4), see p. 539. To sell in small parcels all but a few of the shares which constitute the controlling interest in a company for a price equal to the dividend about to be distributed has been held not to be a "systematic avoidance": *Bilsland v. I. R.*, [1936] 2 K. B. 542.

[40] See p. 328.

[41] S. 33 (1), (2), (5), (6), see pp. 539—40. As to appeal, see p. 351.

[42] S. 35, see p. 541.

[43] See p. 345.

[44] See p. 352 and Chap. 18.

[45] S. 35. An appeal lies against their decision: see p. 351 and s. 36 (2).

or transfer if the income had accrued from day to day, instead of being paid in a lump sum.

Income of More than a Year—In the last chapter cases have been cited in which dividends or interest received in a particular year were held to form part of the total income of that year, although the payment represented profits earned, or it had accrued due, in an earlier period.[46] Relief may be obtained in regard to surtax[47] where it can be proved that the income from any assets represents more than the income attributable to a period of one full year, and that in consequence the amount of surtax payable by an individual for that year exceeds by more than 5 per cent. the tax payable on the income attributable to that year, if it had "accrued from day to day," over the period indicated in section 36.[48] The time for making application is limited as above stated.[49] This section applies to surtax charged under section 21 of the Act of 1922 and section 14 of the Act of 1939.[50]

The Special Commissioners in giving the applicant such relief as may be just, are to have regard to any liability, or additional liability, to super-tax or surtax which would have arisen in preceding years if the income had been treated as accruing from day to day; but their discretion is not limited to this consideration.[51] An appeal lies to the Special Commissioners, as in cases of assessment to surtax and a case for the opinion of the High Court may be claimed.[52]

Money Borrowed for Insurance—The Finance Act, 1930, provides (for surtax purposes only) against deduction from total income of any interest payable on any borrowed money which has been applied to or towards the payment of any premium under a contract of assurance, or of any sum paid in lieu of such premium.[53] "Contract of assurance," "borrowed money," "premium," "interest" and other expressions used are defined in wide terms.[54] But certain exceptions are made to this provision: (a) where the contract of assurance (if made before April 15, 1930) assures payment of a fixed capital sum on death only, or on the expiration of a period of ten years or more or death within that period; (b) where the money was borrowed before April 6, 1929, so long as it was not borrowed

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[46] *Hurll* v. *I. R.*; *Duncan* v. *I. R.*, see p. 301; *Leigh* v. *I. R.*, see p. 305.
[47] Act of 1927, s. 34, see p. 540.
[48] See p. 345. [49] See note [44].
[50] *Gollin* v. *I. R.*, [1943] 1 All E. R. 346; see pp. 339, 345.
[51] S. 34, last para. (i), (ii): *Gollin* v. *I. R.*, above. And see p. 328, note [1].
[52] S. 36 (2); see p. 351, and Chap. 18.
[53] Act of 1930, s. 13, p. 553. See pp. 296, 307–8.
[54] Sub-s. 5.

from an assurance company and for the payment of a premium payable under the same contract of assurance, on the security of which the money was borrowed; as well as in three other classes of cases. All these exceptions are dependent upon the rate of interest payable not exceeding 10 per cent.[55]

The provision applies to any individual who has entered into a contract of assurance himself,[56] or in whom the benefit of a contract has become vested;[57] and, if the benefit has been assigned to him for payment, the interest on money borrowed and applied to making that payment is not to be deducted in arriving at his total income; and if by reason of the vesting of the benefit in him, or by reason of the agreement which vested it in him, he pays any interest on any borrowed money, that interest is not to be deducted.[57]

Non-resident Persons—Although the surtax is chargeable in respect of the incomes of individuals, those individuals need not be resident in the United Kingdom in order to be liable;[58] even a non-resident alien is liable.[59] It is sufficient if the individual has income which is chargeable to the ordinary income tax, whether by direct taxation[61] or by deduction at the source,[62] provided that the total income so chargeable is in excess of £2,000 for any year of assessment. He will be liable to pay surtax on the excess on or before January 1 in the following year, although in that year he may no longer have any income taxable in this country.[63]

The surtax payable by a non-resident may be assessed in the name of an agent or other resident person,[64] and if the non-resident has no representative in this country, he may be assessed in his own name.[65]

Husband and Wife—The income of a wife living with her husband is normally treated as income of the husband for income tax purposes,[66] and consequently also for purposes of surtax, the rates of surtax being applied to the aggregate income. But in the year in which a marriage takes place, the wife's

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[55] Sub-s. 3.

[56] Sub-s. 1. [57] Sub-s. 2.

[58] *Brooke* v. *I. R.*, [1918] 1 K. B. 257, see p. 358.

[59] *Crane* v. *I. R.*, [1919] 2 K. B. 619; *Whitney* v. *I. R.*, [1926] A. C. 37.

[61] As in *Crane* v. *I. R.*, above.

[62] As in *Brooke* v. *I. R.* and *Whitney* v. *I. R.*, above.

[63] The possession of income in the year in which the tax is payable (see p. 328) is clearly irrelevant under ss. 38 and 42 (1) of the Act of 1927, as it was held to be under the super-tax provisions in *Crane* v. *I. R.*, above.

[64] The provisions applicable to ordinary income tax in such cases (see p. 240) are applied to surtax by Act of 1927, s. 42 (7), see p. 544; see also s. 44 (2), p. 358.

[65] *Whitney* v. *I. R.*, above; cf. *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, p. 272.

[66] See p. 273; *Badie* v. *I. R.*, p. 349.

income for the period to the date of the marriage forms part of her total income,[67] which is separately chargeable to surtax. The wife's income for the period only from the date of the marriage to the end of the year forms part of the husband's total income for that year.[68] But where the income chargeable with tax at the standard rate is to be computed on the basis of the previous year's receipts (as under Cases IV and V), the wife's income so computed is included in the husband's total income for the year following that in which the marriage took place.[69]

If an application is made by either husband or wife before July 6 in 1930—31 or any later year in which the surtax is payable,[70] the surtax will be charged separately on the income of the husband and on that of the wife for that and subsequent years, until the application is withdrawn; such an application affords no relief as to the total amount payable.[71] but it may relieve the husband of liability after his wife's death if he survives her.

In a case in which there has been no application for separate assessment, and the husband dies, the wife's total income for the year in which the death takes place includes only her income for the portion of the year which elapses after her husband's death,[72] and it is only on that part of her income that she is liable to be assessed to surtax for that year. On the other hand, if such an application is in force for any year of assessment, and the husband dies in that year, a separate assessment made upon the widow at rates of surtax calculated according to the aggregate "total income" in the previous year of husband and wife together is invalid.[73]

Where the wife is living separately under an agreement which obliges the husband to pay her a weekly sum during their joint lives, the sums so paid are deductible in computing the husband's total income for surtax purposes.[74]

An order of the Divorce Division for periodical payments to the wife did not necessarily enable the husband to deduct any

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[67] *I. R.* v. *Brooke*; *Murray* v. *I. R.*; *I. R.* v. *Leith*, [1923] 2 K. B. 815.

[68] *I. R.* v. *Bell*, *ibid.*

[69] *Elmhirst* v. *I. R.*, [1937] 2 K. B. 251, where LAWRENCE, J., considered that his decision was incompatible with *I. R.* v. *Brooke*, *etc.* above, and that the latter was overruled by *Leitch* v. *Emmott*, see p. 274.

[70] See p. 351.

[71] Act of 1927, s. 42 (9) (see p. 545), as amended by Act of 1930, s. 22, see p. 557; cf. the provisions for a similar purpose as regards income tax proper (see p. 275, note [67]) and *In re Ward*, [1922] 1 Ch. 517, there cited.

[72] *I. R.* v. *Portman* (*Viscountess*), [1923] 2 K. B. 815; see, however, *Leitch* v. *Emmott*, p. 274.

[73] So held by ROWLATT, J., in *Viscountess Coudray* v. *I. R.* (1929), 15 Tax C. 255; an appeal by the Crown to the C. A. was settled: *ibid.*; see the observations of Lord HANWORTH, M.R., at 265.

[74] *Bodie* v. *I. R.*, [1924] 2 K. B. 198.

proportion of the super-tax paid by him,[75] and probably the same may be said of surtax. Where a wife receives an annuity under a deed of separation, and has also an income from other sources, and the husband covenants to pay surtax, there may have to be an apportionment.[76]

Annual Payments free of Surtax—A testator may direct his executors or trustees to pay super-tax or surtax, just as he may direct them to pay income tax proper, or to pay an annuity, etc., without deduction of income tax:[77] and if the devisee or annuitant has other income, the executors or trustees must pay that part of the surtax levied on her whole income, which is proportionately attributable to the amount paid by them under the will to her (either directly or indirectly by way of payment of income tax),[78] unless, indeed, any such apportionment is excluded by the provisions of the will.[79] The amount of surtax paid by the executors together with income tax on that amount, will, however, form part of the total income of the payee for the year in which the payment is made,[80] although the executors have had to make the payments in part out of capital.[81]

The direction in the will must be specific; a gift "clear of all deductions, including income tax,"[82] and a gift "of such a sum . . . as after deduction of the income tax payable . . . in respect thereof will leave a clear sum of £2,000,"[83] have been held not to oblige or allow the executors or trustees to pay the super-tax, which must be borne by the annuitant.[83] But the Finance Act, 1927,[84] makes the surtax a deferred instalment of income tax, and possibly a direction of this kind contained in a will made after the passing of that Act may apply to surtax as it does to income tax proper. On the other hand, a gift of an annual sum "free of income tax and of all other deductions," with other language showing the intention of the testator was held to entitle the annuitant to "the naked amount

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[75] *Campbell* v. *Campbell*, [1922] P. 187.

[76] As in *In re Bowring*, below: *Fleetwood-Hesketh* v. *Fleetwood-Hesketh*, [1929] 2 K. B. 55.

[77] See pp. 191—193 A direction in a will made before the Act of 1927 to pay super-tax applies to the surtax: *In re Hulton*, [1930] W. N. 125.

[78] *In re Bowring* (1918), 34 T. L. R. 575; *Richmond's Trustees* v. *Richmond*, 1935 S. C. 585, where it was also held that the beneficiary need not account to the trustees for her personal allowances. As to deduction of income tax from payments made under a will, see p. 191. So, under a deed, *Re Sharman's Settlement*, [1942] 2 All E. R. 553.

[79] *In re Armaghdale (Lord)*, [1928] W. N. 26: 44 T. L. R. 239

[80] *Meeking* v. *I. R.* (1920), 7 Tax C. 603.

[81] *Michelham's Trustees* v. *I. R.* (1930), 15 Tax C. 737.

[82] *In re Crawshay*, [1915] W. N. 412; *Prentice* v. *Prentice*, 1926 S. C. 211.

[83] *In re Bates*, [1925] 1 Ch. 157, distinguished in *Re Reckitt*, below, though not on the ground suggested in the text.

[84] S. 28, see p. 228. The will in *Re Hulton*, above, made specific mention of super-tax.

of the annuity free from both income tax and super-tax"; the super-tax was directed to be apportioned between the annuity and the residue on the principle above indicated;[85] so, where the gift was " without any deduction . . . free from income tax."[86] The two decisions last cited are now applied to surtax.[87]

The reduction in amount of annual payments which are free of surtax brought about by section 25 of the Act of 1941 has been described in Chapter 8.[88]

Assessment : Appeals : Collection and Recovery—The assessment to surtax is made by the Special Commissioners,[89] and is made for each year in one sum, without regard to the separate sources from which the total income may arise.[89] There is no power to make an assessment in respect of money due, contingent on its being paid in the future.[90] But the Special Commissioners may make a new or additional assessment during any time within the year of assessment or within six years thereafter.[91] Appeals are heard by the Special Commissioners; subject to this, all the provisions applying to income tax as regards assessment. collection and recovery, appeals, statement of cases for the High Court, and so on, apply to the surtax as well, so far as they are applicable.[92] The rules as to " persons chargeable " are also to apply to the same extent,[93] so far as individuals are concerned. But, though an incapacitated, non-resident or deceased person may be charged in the name of his representative to income tax, this does not enable an assessment to be made on a guardian or trustee in respect of the total income of an infant,[94] nor would it appear that any other incapacitated person can be charged in the name of a representative. But any such person may be assessed in his own name.[95]

The surtax is not due and payable before January 1 in the year following that for which it is assessed.[96] Subject to very

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[85] *In re Dawat*, [1920] W. N. 262.
[86] *In re Bowen*, [1925] W. N. 206.
[87] *In re Rerkitt*, [1932] 2 Ch. 144 (C. A.); see the passage cited p. 192 from *In re Skinner*, [1942] 1 Ch. 82.
[88] See p. 208.
[89] Act of 1927, s. 42 (2), see p. 544, and Regulations applicable under sub-s. 8, see p. 742. The assessment may be made by a single Commissioner, Act of 1942, 10th Schedule, para. 5 (4), p. 671.
[90] *Lambe* v. *I. R.*, [1934] 1 K. B. 178, see p. 305.
[91] Act of 1927, s. 42 (3), which applies the income tax provisions considered at pp. 372—378; see also *Meeking* v. *I. R.*, above. With regard to a deceased person, the time is more restricted: see Act of 1923, s. 29 (3), p. 522.
[92] Act of 1927, s. 42 (7), see p. 544; the relevant income tax provisions are dealt with in Chaps. 17—19. The appeal may be heard and determined by two Special Commissioners: *R.* v. *Hood-Barrs*, [1943] K. B. 455.
[93] S. 42 (7) (a); see Chap. 12.
[94] *I. R.* v. *Longford*; *I. R.* v. *Pakenham*, [1928] A. C. 252; this decision appears to apply to surtax as to super-tax.
[95] *Whitney* v. *I. R.*, [1926] A. C. 37, see p. 348. As to returns, see p. 358.
[96] Act of 1927, s. 42 (1), see p. 328; if the assessment is not signed or allowed before that date, the surtax becomes due and payable on the day following that of the signing and allowance.

strict limitations, relief may be obtained where surtax has been paid in excess owing to a mistaken return.[97]

The person assessed must be served with notice of assessment; notice of appeal must be given within twenty-eight days of such service; it must be given to the Special Commissioners in writing, and must specify the grounds of appeal.[98]

The provisions for appeal in connection with surtax on the income of companies have already been indicated;[99] against a decision of the Special Commissioners, or any assessment made in consequence thereof, on a question of sales or purchases *cum* dividend, and on an application to spread income out over a period of more than one year, there is the same right of appeal to the Special Commissioners and the same right to require a case to be stated, as against an ordinary surtax assessment.[1]

Recovery from Trustees—A special provision[2] enables surtax to be recovered from trustees, in certain cases only. If any person's surtax is not paid within six months after the date when it became due and payable,[3] and that person is a beneficiary of a discretionary trust under which income or capital may be paid to him or applied for his benefit, the Special Commissioners may serve a notice on the trustees.[4] It then becomes the duty of the trustees to satisfy the unpaid amount out of "any income or capital which by virtue of any exercise of the discretion under the trust the beneficiary may become entitled to receive or to have applied for his benefit."[5] The notice may be served at any time, and payments may be made from time to time until the particular amount of surtax to which the notice refers is satisfied.[6] But the notice refers only to that amount, and there is no duty on the trustees to discharge future assessments of surtax; neither is there a duty on them, or on any other person in whom the discretion may be vested, to exercise it so that any income or capital of the trust is brought within the words above quoted. On the other hand, the notice need not be confined to surtax in respect of income arising under the trust. Any payment made under the notice is treated as income of the beneficiary for surtax and other

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[97] S. 42 (3) of the Act of 1927 applies s. 24 of the Act of 1923 (see p. 391) to surtax. Such relief was obtained in *I. R.* v. *Payton*, see p. 337.

[98] Regulations 2, 5, see p. 743; as to notification of increase under the No. 2 Act of 1939, see s. 10, p. 632.

[99] See pp. 235—238, 344.

[1] Act of 1927, s. 36 (2), see p. 541; and see pp. 345—347, and Chap. 18.

[2] Act of 1923, s. 34, see p. 591. As to collection in cases of infancy and death, see p. 399

[3] See note [98], above. [4] Sub-ss. 2, 6.

[5] Sub-s. 3; and such amount becomes recoverable from them as a debt due to the Crown: sub-s. 5; see p. 572.

[6] Sub-ss. 2, 3.

purposes,[7] and presumably as income of the year of assessment in which it is paid.

Provision is made for the assessment of surtax on a custodian of enemy property, and for payment by him out of money in his hands.[8]

Returns, etc.—The return of total income[9] and the returns applicable to surtax only[10] are dealt with in the next chapter. It should, however, be noted here that any individual who is chargeable to surtax on his total income for any year, is bound under penalty to give notice to that effect to the Special Commissioners before September 30 next following that year.[11]

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[7] Sub-s. 4.

[8] Act of 1944, s 42, and Fourth Sched., Part I, paras. 2, 5 *sqq.*, and Part IV, pp. 690—1, 694; see p. 273.

[9] Act of 1927, s. 43 (1), see p. 545.

[10] S. 44.

[11] S. 44 (1), (3); the year ends on April 5.

CHAPTER 16

RETURNS: PENALTIES: CLAIMS FOR ALLOWANCE OR DEDUCTION

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Liability to make Returns—For the purposes of income tax[1] various classes of persons are required to make returns (also called "statements, lists and declarations") of different kinds. The most familiar of these is the return of profits, which is required by the service of a notice on every person considered to be chargeable.[2] But it is the duty of every person chargeable to income tax (including surtax) to give notice to the inspector at or before the end of the relevant year of assessment, unless he has delivered a return of profits.[3] The liability to make a return of profits (or to give notice if chargeable) is not confined to persons whose own income is in question; it is imposed upon every person acting in any character on behalf of any person who by reason of incapacity or of non-residence in the United Kingdom "cannot be personally charged";[4] upon every person who in whatever capacity is in receipt of any money or value, or of any taxable profits, belonging to any other person who is chargeable in respect thereof, or would be so chargeable if he were resident and not incapacitated.[5] The obligation imposed by section 103 applies to trustees and to executors (not being executors in the course of administration), and to a bank in whose name, or in the name of whose nominee, stock has been registered or inscribed either as security for a loan or an overdraft of the owner or a third party, or merely at the owner's request.[6] The secretary of a company or the officer acting as treasurer, auditor, or receiver of any other body of persons, must make returns on behalf of the company

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[1] Additional returns and notices required for surtax only are indicated p. 358.

[2] Ss. 99, 100, see p. 418; s. 109, see p. 422. As to the method of service, see s. 99 (2), s. 220 (p. 449), and *Berry* v. *Farrow*, [1914] 1 K. B. 632 (p. 256); but such a notice has now to be delivered by the inspector of taxes, and the return made to him, except that a notice requiring a statement of annual value for Sched. A or B (see below) is still delivered by the assessor: Act of 1927, s. 43 (2), see p. 545. See further, p. 357.

[3] Act of 1942, s. 42; and Tenth Sched., para. 1 (2), p. 670.

[4] Act of 1918, s. 101, see p. 419. Vicarious assessments in such cases are discussed pp. 269 *sqq.*; but see *Ex p. Huxley*, p. 269.

[5] S. 103, see p. 420. See also Sched. D, Cases I and II, r. 16, p. 479.

[6] *Att.-Gen.* v. *National Provincial Bank, Ltd.* (1928), 44 T. L. R. 701.

or body.[7] Any body corporate may be required by notice from the Special Commissioners to furnish them with a certified copy of the register of names of holders of shares, stock, debentures or debenture stock issued by the body, or of any specified class of entries in that register.[8] A society registered under the Industrial and Provident Societies Acts must deliver a return showing amounts of £5 or more paid as "loan interest" to persons whose usual place of abode is in the United Kingdom, with the names and addresses of the recipients; this return has to be made to the inspector of the district where the registered office is situate, on or before May 1.[9]

Any person may be required to give a list of every lodger and inmate in his dwelling-house.[10] Employers may be required "by notice from an assessor"[11] to give lists of all their employees (including directors and managers of a company and weekly wage-earners); and also to send returns of payments made in respect of the employment, except in the case of any employee the rate of whose remuneration does not exceed £55 for the half-year (or a proportionate amount for less) and who is not employed in any other employment.[12] The return is to include payments for expenses, payments made on behalf of employees and not repaid, and payments for services rendered outside the course of the employment.[13] Moreover, every person carrying on a trade or business, if required by notice from an inspector with regard to a particular year must make a return of every payment or other valuable consideration made or given by way of commission to an individual who is not an employee of that person.[13] Returns required in connection with deduction and payment of tax by employers have been indicated in Chapter 11.[14]

There are special provisions for a notice requiring a declaration or return from a person newly come into a parish.[15]

A person who has two residences, or who carries on a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, may be called upon to

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[7] S. 106, see p. 421, see also s. 105 (2). As to occupiers of land, see p. 356.

[8] Act of 1930, s. 23, see p. 558, see also sub-s. 2 as to payment, and sub-s. 4 as to penalties.

[9] Act of 1933, s. 32 (6), see p. 570, failure to make the return involves forfeiture of the relief allowed under sub-s. 4; "loan interest" is defined in sub-s. 7.

[10] Act of 1918, s. 104, see p. 420.

[11] Or by an inspector if the assessor fails to give notice s. 109 (a). As to service, see s. 220, p. 449.

[12] S. 105, see p. 420, as amended by Act of 1941, s. 22 See also Regulations made with regard to superannuation funds, reg 11, p. 746

[13] Act of 1939, s. 19 (1), (2), see p. 629. There is a £15 limit in sub-s. (2).

[14] See pp. 250—4.

[15] S. 102 (1), (2) (see p. 419), and s. 109 (see p. 422).

make a return in each parish;[16] and a person who occupies lands in different parishes must do so.[17]

The "schedules" that may be demanded by precept of the General or Special Commissioners are dealt with in connection with appeals.[18]

A person chargeable under Schedule D, who desires to be assessed by the Special Commissioners, must give notice to the inspector in making his return.[19] But such a notice should not be given by any person who desires to contend that he is not liable to be charged under that Schedule.[20]

Notices to make returns are dispensed with in connection with income affected by the law relating to trading with the enemy.[21]

Returns relating to Annual Value, Rent, etc.—The return of annual value which has to be made by an occupier of lands to be charged under Schedule A or B, who is served with a particular notice by the assessor, must contain the particulars of rent and annual value, or of annual value alone, and of other matters, required by No. I of the Fifth Schedule.[22] In the "preparatory year" before the quinquennial revaluation[23] the particulars are to be furnished as for that year.[24] In London, the assessment committee is to transmit to the inspector of taxes the returns received for the purpose of rating valuations; and if the inspector considers these returns sufficient for the purpose of assessing income tax on annual value, no further return is to be called for.[25]

Particulars may also be required by notice from persons entitled to rents or other annual payments in respect of land, or receiving such on behalf of other persons, in order to ascertain liability under the provisions of the Act of 1940 relating to these matters: the general penalties for neglecting to deliver returns are applicable.[26] Further notices may be served on persons who receive rent, and on persons who are or have been liable to pay rent, requiring particulars for the purpose of recovering tax under Schedule A; a penalty of £50 is provided for failure to comply or for a false statement.[27]

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[16] Sched. D, Misc. Rules, r. 5, see p. 483; this rule probably applies to returns for all Schedules: see s. 208, p. 447. See also "Place of Charge," pp. 365 *sqq.*

[17] Sched. A, No. IX, r. 5, see p. 466. Rr. 2, 3 and 4 of No. IX appear to be rendered obsolete by s. 28 of the Act of 1926, see p. 529.

[18] See p. 383. [19] S. 123, as amended, see p. 425.

[20] See *per* ATKIN, L.J., in *Avelino Aramayo & Co.* v. *Ogston*, [1925] 1 K. B. 110.

[21] Act of 1944, Fourth Sched., paras. 3, 4.

[22] See p. 492; and see s. 100 (1) (a) and s. 207, pp. 419, 446, and notes [3], [17], above.

[23] See Chap. 2, p. 37.

[24] Act of 1920, s. 28; First Sched., Part I, r. 3, see p. 562. See also r. 2 as to notices, returns, etc., in that year.

[25] S. 32 (1), see p. 560.

[26] Act of 1940, s. 18, see p. 639; and see Chap. 2, pp. 48 *sqq.* As to penalties, see p. 359. [27] Act of 1941, s. 14, see p. 654.

Returns of Profits : and of Total Income—Every person chargeable, and every person liable on some other person's behalf, who is served with a notice addressed to him by the inspector of taxes, must make a return of the profits or gains arising to him (or to the person in respect of whose income he is liable to make the return) from each and every source, that is, of the taxable income from that source; such a return does not include any interest or other annual payment arising out of the property of any other person.[28] And every person who is required by such a notice to make a return of income under Schedule D or E must make the return whether he is chargeable or not.[29]

The above provisions extend to "persons" of all kinds, including companies and other bodies. There is also power,[30] by a notice served by the inspector, to require any individual to furnish a return "of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment." Although the words quoted are not unambiguous, it would seem that any source of income which the individual has ceased to possess before the beginning of the year of assessment need not be included in the return, whether income was derived from that source in the preceding year or not; for if a source of income is not possessed in the year of assessment, there is no tax leviable in respect of income derived from that source.[31] But the income of the preceding year in respect of a source which *is possessed* in the year of assessment, even though no income is derived from it in the latter year, must clearly be included. The power to require such a return appears to apply to the representative of an individual who is incapacitated, non-resident or deceased.[32]

The income is to be computed (according to the provisions of the Income Tax Acts)[33] by reference to the year preceding the year of assessment, and not to any other year or period.[34]

In prescribing forms, the Commissioners are to aim at securing that no person shall have to make more than one return annually of his income and its sources.[35]

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[28] Act of 1918, s. 100 (1) (b), (3); Act of 1927, s 43 (2), see p. 545, as to the persons liable, see above. The forms are now prescribed by the Commissioners of Inland Revenue (Act of 1927, s 43 (3)); but the General Declaration is prescribed by Act of 1918, Fifth Sched. XV, see also p. 360, note [61]. The return is to be made within the time specified in the notice (usually 21 days).

[29] Act of 1918, s. 100 (4), as amended, see pp. 419, 545, *Wall* v. *Cooper* (1929), 8 A. T. C. 336. Certain allowances under the Income Tax Act, 1945, must be claimed in the return; s. 55, see p. 728.

[30] Act of 1927, s. 43 (1), (2), see p. 545; it is now in common use.

[31] See p. 4, "The Income Tax Year." In any year to which an election made by him under s. 17 of the Act of 1928 applies, the return made by a person chargeable to surtax is limited to Scheds D and E: see note [45], p. 359.

[32] See p. 354, notes [4], [5], [6]; and see *I. R.* v. *Longford (Countess)*, [1928] A C. 252.

[33] See Chaps. 2—11.

[34] S. 43 (1) and proviso.

[35] S. 43 (3); see also Fifth Sched., XV, p. 393. And see the following paragraphs.

If a return duly required of the profits of a trade, profession or vocation is not delivered, or if the Revenue are not satisfied with it when delivered, they may by notice require copies or inspection of accounts and so on, as specified in the notice; the inspector or other officer may take copies or extracts. A penalty of £50 is provided, with a further daily penalty of £50 for non-compliance after judgment.[36]

Returns for purposes of Surtax—As appears from the provision above cited,[35] the return of total income should ordinarily be sufficient for purposes of surtax. But in any case in which the particulars furnished in that or any other return are insufficient for this purpose, or where no return has been made, a notice may be served by the Special Commissioners, and the recipient must furnish a return, in the form and within the time required by the notice, of his total income, or of that of any incapacitated, non-resident or deceased person whom he represents;[37] the return must be made whether that total income is, or is not, such as to give rise to a liability to surtax.[38] Service of such a notice in a foreign country is good service, even if addressed to a non-resident alien.[39] Moreover, any person who is chargeable to surtax must give notice to that effect before September 30 next after the year for which he is chargeable.[40] Penalties are provided in either case.[41] The return, or the absence of one, is not binding on the Special Commissioners.[42]

These returns may be demanded in any year although no Act imposing the surtax for that year has yet been passed.[43]

Any individual who has been required to make such a return of his total income may be required (under penalty) by the Special Commissioners to furnish further particulars, whether a surtax assessment has been made or not;[44] this provision (unlike those above summarised) appears to apply only to the individual's own income, and not to that of any other individual whom he represents.

There is also a provision by which an individual who is chargeable to surtax in any year may elect to make a return of his total income to the Special Commissioners by giving them notice on or before May 1 in the following year; such

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[36] Act of 1942, s. 35 (1), (3), see p. 461, a company is liable to the penalty as well as its secretary: p. 354.

[37] See Chap. 11. A trustee must make the return so far as the facts are within his knowledge: *Brooke* v. *I. R.*, [1918] 1 K. B. 257, 265, see p. 316, *I. R.* v. *Longford* (above), [1928] A. C. 261, 268. As to a custodian of enemy property, see p. 353.

[38] Act of 1927, s. 44 (2), see p. 546. [39] *Whitney* v. *I. R.*, [1926] A. C. 37.

[40] S. 44 (1), see p. 514; that is, the September 30 before the January 1 on which the tax will be payable: see p. 351.

[41] S. 44 (3), (4); as to limitation of time, see p. 316. [42] S. 44 (3).

[43] Act of 1918, s. 210, see p. 447; *Bowles* v. *Att.-Gen.*, [1912] 1 Ch. 123, see p. 328.

[44] Act of 1922, s. 22, see p. 513; applied to matters connected with money borrowed for insurance: Act of 1930, s. 13 (4), see p. 347.

an election will continue in force until he has revoked it by notice.[45] For any year of assessment for which the election is in force, he must make a return of total income in compliance with a notice from the Special Commissioners;[46] and the return of total income made to the Inspector of Taxes will only include income chargeable under Schedule D or E.[47] This provision, like that last mentioned, appears to apply only to a return made by an individual in his own behalf, and not in a representative capacity.

Particulars as to Government securities of the United Kingdom or of Northern Ireland or as to the shares, stocks, etc., of any company or other body incorporated in the United Kingdom may be required by the Special Commissioners from the holders or (in the case of securities held by nominees or bearer securities) from persons by or through whom the income has been paid or from other intermediaries; a penalty is provided.[48] Banks are not obliged to disclose particulars relating to income from securities where the beneficiary is not resident in the United Kingdom.[49]

Penalties—In any case where no return is made, or the return made is unsatisfactory, the Revenue authorities may make the best assessment they can, either in the first instance[50] or by way of additional assessment[51] or of surcharge.[52]

But beyond this there are definite penalties provided in various enactments, some of which appear to cover the same ground in different ways; any attempt to reconcile them must be futile, and none has been made in any decided case. It seems to be for the Revenue authorities to elect under which of these provisions they will proceed.

For neglect or refusal to deliver a true and correct return within the time limited in a particular notice, or for wilful delay in delivering such a return, the penalty, whether proceedings are taken before any Court, or before the General Commissioners, is £20, together with treble the tax which the defaulter ought to be charged under the Act of 1918;[53] this means presumably treble the tax which he ought to be charged in respect of the source of income that should have been included in the return;[54] those penalties are leviable where there has been

[45] Act of 1928, s. 17 (1), see p. 549; as to the effect of revocation, see proviso.
[46] S. 17 (2) (a); as to penalties and as to the effect of a return, see notes [41], [42], above.
[47] S. 17 (2) (b); see p. 357. [48] Act of 1939, s. 18 (1), (2), (4), (6), see p. 627.
[49] Sub-s. 5; the language seems to indicate that particulars relating to matters mentioned in sub-ss. 1, 2, 3 other than income must be furnished. See No. 2 Act of 1945, s. 55 (2), p. 790.
[50] Act of 1918, ss. 107 (2), 112, 116, 121 (4); see Chap. 17. As to surtax, see preceding paragraph. [51] S. 125, see p. 426. [52] S. 126.
[53] S. 107 (1) of the Act of 1918, as amended by s. 23 (2) of the Act of 1923, see p. 421. If a return delivered is incorrect, the "time limited" is immaterial. No. 2 Act of 1945, s. 28, p. 784.
[54] Contrast the language of s. 30 of the Act of 1918, p. 410.

mere neglect.[58] They are also applicable where a person who has not delivered a return has failed without reasonable excuse to give notice that he is chargeable.[59]

Where fraud is proved, the money penalty leviable is no greater than the above[60] (except in connection with a claim for any allowance or deduction),[61] but if any person makes a false statement or representation in a return he is also liable to six months' hard labour on summary conviction.[62] The penalty for aiding or inducing another person to make a false or fraudulent return is £500.[63]

A person required to make a return on behalf of another may obtain further time from the General Commissioners if he satisfies them that he is unable to deliver a perfect return within the time limited;[64] but if the return has to be made on a person's own behalf he can only obtain an extension if he has delivered the best return he can within the time limited.[65] Persons exempt from tax and, in general, those chargeable in public departments are not liable to penalties for non-delivery.[66]

In respect of a list of employees to be delivered by a company or other body corporate, the company or body is liable to a penalty as well as the secretary.[67]

There is a penalty of £100 for neglect or refusal to deliver an account under General Rule 21 in respect of payments not payable out of profits or gains brought into charge.[68]

Provisions as to proceedings for recovery are contained in sections 221—223.[69] The Commissioners of Inland Revenue have discretion to mitigate penalties and to stay proceedings;[70] but the Courts have no discretion to vary the amount of the penalty.[71] The revenue authorities may, without taking proceedings, enter into an agreement for the settlement of a claim for penalties;[72] such an agreement will bind both parties, including the executors of the taxpayer.[73]

Proceedings for the recovery of any fine or penalty in connection with income tax or surtax may be commenced at

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[58] *Att.-Gen* v. *Till*, [1910] A. C. 50. S. 107 of the Act of 1918 makes it clear that the penalty applies although a return has been delivered, if it is not correct, but neglect or wilful refusal must be established.

[59] Act of 1942, 10th Sched., para. 1 (3), see p. 670.

[60] S. 132 (1) (b), see p. 428; s. 146 (1), see p. 433. As to surtax, see Act of 1927, s. 44 (3), see p. 546

[61] Act of 1918, s. 30, see p. 363.

[62] S. 227, see p. 451. See also Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 5 (b).

[63] Act of 1918, s 132 (2), see p. 429, as amended by s. 23 (3) of the Act of 1923.

[64] S. 107 (3), see p. 421.

[65] S. 140 (4), see p. 423.

[66] S. 107 (4).

[67] S. 105 (4), see p. 421.

[68] R. 21 (2A), see p. 196.

[69] See pp. 449-50. See also Inland Revenue Act, 1890 (53 & 54 Vict. c. 21), s. 21, which applies to proceedings under "any Act relating to inland revenue."

[70] S. 222 (1), see p. 450.

[71] *L.-A.* v. *McLaren*, see p. 363.

[72] *Att.-Gen.* v. *Johnstone* (1926), 10 Tax C. 758; *Cockerline* v. *I. R.* (1930), 16 Tax C. 1.

[73] *Att.-Gen.* v. *Midland Bank Executor and Trustee Co., Ltd.* (1934), 19 Tax C. 136.

any time within six years after the date when it was incurred.[71] They may be brought against the taxpayer's personal representatives.[72] The period is extended in cases of fraud or wilful default, except where the personal representatives are concerned.[73]

Statements made, or documents produced, may be given in evidence in any of the proceedings referred to above (or even in criminal proceedings) although their making or production has been induced by a hint of pecuniary settlement.[74]

Rectification of Returns—Where a person has delivered a return and discovers an omission or wrong statement therein, he may rectify it by delivering an additional return " and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement ";[75] where a person has not delivered a return within the time limited,[76] he may deliver it at any time before proceedings have been commenced for recovery of a penalty for such non-delivery, " and thereafter no such proceedings shall be taken."[77] It is not clear whether in the former case, the additional return can be delivered even after proceedings have been commenced, so as to cause such proceedings to fail.[78] But in a case of non-delivery, even if proceedings have been commenced, they may be stayed if the General Commissioners are satisfied that no fraud or evasion was intended.[79]

If an imperfect return has been delivered and the General Commissioners are satisfied that there is a sufficient reason for this, they may extend the time for delivery.[80]

These provisions apply to schedules[81] as well as to returns.

Where a notice of surcharge[82] is given, the person receiving it may within ten days deliver a true return whether he has previously delivered any return or not, and if the inspector is satisfied with it and with his explanation the person will be charged in " single rate of tax " only.[83]

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[71] Act of 1923, s. 23 (1), see p. 520.

[72] Law Reform (Misc. Provns.) Act, 1934, s. 1 (1), cf. *Att.-Gen.* v. *Canter*, p. 363.

[73] Act of 1942, s. 33 (2), (4), see p. 608.

[74] Act of 1942, s. 34. The incentive for this enactment seems to be found in *R.* v. *Barker*, [1941] 3 All E. R. 33.

[75] Act of 1918, s. 140 (1), see p. 432. The " discovery " must be spontaneous: see *Att. Gen* v. *Midland Bank, etc., Ltd.*, above.

[76] By the notice; see p. 354.

[77] S. 140 (2).

[78] In *Att.-Gen.* v. *Till* (above), [1910] A. C. 64, Lord GORELL says that both non-delivery and delivery of an incorrect statement may be remedied both before and after proceedings have been commenced; while Lord SHAW (at 68) says " it is admitted " that where an incorrect statement has been delivered, s. 129 of the Act of 1842 (now s. 140 of the Act of 1918) " cannot be invoked " after proceedings have been commenced.

[79] S. 140 (3); this sub-section speaks of " proceedings for recovery of any such penalty," and cannot therefore apply to the case dealt with in sub-s. 1 which speaks of " any proceeding "; but the discretion given to the Commissioners of Inland Revenue by s. 222 appears to supply the omission.

[80] S. 140 (4).

[81] See p. 383.

[82] See p. 375.

[83] S. 127, see p. 427.

A person who has paid excessive tax under Schedule D, or Schedule E, by reason of mistake in the return made by him for the purposes of the assessment may obtain relief from income tax and any consequential relief from surtax;[84] this matter is considered in connection with claims for repayment.[85]

Claim for Relief by Deduction or Repayment—A claim for any relief given by way of deduction of tax and described in Chapter I[86] is delivered to the inspector in a form directed by the Commissioners of Inland Revenue.[87] There is also provision for a return of total income in this connection;[88] the contents of this return are discussed in Chapter 14. Where necessary, it is to be delivered within the time limited for the delivery of returns,[89] unless the General Commissioners for any special reason allow further time. Where one person is assessable on behalf of another[90] he may make such a claim on behalf of that other.[91]

If the inspector does not object to the claim within a certain time[92] the General Commissioners for the division in which the claimant resides[93] may allow the claim; if, on the other hand, the surveyor objects in writing they are to hear the claim by way of appeal.[94]

The above provisions appear to apply to claims made both before and after assessment[95] as well as to claims for repayment where the tax has already been paid by deduction or otherwise. In allowing claims for repayment the General Commissioners are to send a certificate to the Special Commissioners, and the latter issue the actual order for repayment.[96]

A claim for the relief given to registered societies in respect of share interest and loan interest is also delivered to the surveyor

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[84] Act of 1923, s. 24, see p. 520. Act of 1927, s. 42 (3), see p. 544.

[85] See p. 391 [86] See p. 8 *sqq.*, and Act of 1927, s. 40, p. 542.

[87] S. 41 (1). As to limitation of repayment claims, see p. 391.

[88] Act of 1918, s. 27, see p. 495. Fifth Sched. No. XVII, see p. 493. Finance Act, 1920, s. 17, see p. 463. These enactments are still in force, subject to the provisions of s. 41 of the Act of 1927: see sub-s. 3, p. 543. The return of total income furnished in compliance with a notice given under s. 43 (1) (see p. 357) should, however, be sufficient for the purpose. As regards relief in respect of insurance premiums, etc., the earlier provisions appear to be unaffected by s. 41 of the Act of 1927, and as to Dominion tax, see p. 19. S. 41 is applied to certain claims under the Income Tax Act, 1945, see s. 56 (3), p. 730.

[89] By the notice: see p. 354. [90] See pp. 269 *sqq.*

[91] Act of 1918, s. 28 (5), see p. 410, see also sub-s. 4. And see note [89], above

[92] S. 27 (3). [93] S. 28 (1); see, however, sub-s. 2.

[94] Act of 1918, s. 27 (5), see p. 409, Act of 1927, s. 41 (2), (3), see p. 543, a case may be stated. For the procedure in appeals, see Chap. 18, and as to the appeal on a question of the claimant's status, preserved by s. 41 (3), see p. 385.

[95] See *per* Cozens-Hardy, M.R., in *Brooks* v. *I. R.*, [1914] 1 K. B. 585. As to claims where husband and wife are separately assessed, see Finance Act, 1920, s. 25 (1) (d), p. 499; and as to allowances under I. T. Act, 1945, see p. 178.

[96] Act of 1918, s. 29, see p. 410. Claims for repayment in connection with relief of other kinds than the allowances and deductions here referred to are dealt with in Chap. 18.

in a prescribed form, with similar provisions as to appeal; but the matter is to be dealt with by the Special Commissioners.[97]

Reliefs relating to income during administration of estates may be claimed or adjusted within three years after the year of assessment in which administration is completed.[98]

Finally, any claim for relief in respect of diminution of income due to the war is to be made to the Commissioners of Inland Revenue in a prescribed form within twelve months from the end of the year of assessment.[99]

Reliefs relating to income which is or has been affected by the law as to Trading with the Enemy are dealt with by the Act of 1944.[1]

Penalties in connection with Claims—The penalty for fraud of any kind in connection with a claim for relief is £20, and treble the tax "chargeable in respect of all the sources of his income and as if such claim had not been allowed,"[2] that is to say, "*the penalty is not to be measured by anything* [the claimant] has done in returning his income or by what has followed on this return, but by the income itself, the total income for the year of charge," including any income on which tax has already been paid.[3] The offence of untruly declaring any income, etc., is confined to a false or untruthful declaration; mere inaccuracy is not sufficient.[4] Penalties under section 30 are incurred, although the false return of total income does not increase the actual relief claimed.[5] The penalty for aiding and abetting is £500.[6] Proceedings may be brought against the personal representatives of the person who made the claim.[7]

A person who knowingly makes a false statement or representation for the purpose of obtaining any allowance, reduction or repayment, for himself or another, is liable on summary conviction to six months' hard labour.[8]

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[97] Act of 1933, s. 32 (5), see p. 570, applying Act of 1927, s. 41 (1), (2), see notes [87], [94], above.

[98] Act of 1938, s. 34 (1), (2), (3), see p. 325.

[99] No. 2 Act of 1939, s. 11 (1), (6), as extended: see pp. 24, 380.

[1] Fourth Sched., Part I, paras. 7, 9, pp. 692-3.

[2] Act of 1918, s. 30, as to limitation of proceedings, evidence and mitigation of penalties, see pp. 360-1.

[3] *L.-A.* v. *McLaren* (1905), 7 F. 984, 5 Tax C. 110, see *per* Lord KINNEAR, at 115.

[4] *Ibid.*, *per* Lord KINNEAR, at 114, contrast the language of s. 30 with that of s. 107, p. 360.

[5] *Att.-Gen* v. *Lloyds Bank Ltd* (*as Exor of Lillicrap*), [1944] 2 All E. R. 157. The reason for proceeding under s. 30 rather than s. 107 may perhaps be found in note [55].

[6] S. 30 (2) of the Act of 1918, see p. 410, as amended by s. 23 (3) of the Act of 1923.

[7] Law Reform (Misc. Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 1 (1): the limitation enacted in sub-s. 3 does not apply: *Att.-Gen* v. *Canter*, [1939] 1 K. B. 318.

[8] Act of 1918, s. 227, see p. 451. See also Perjury Act, 1911, s. 5 (b).

CHAPTER 17

MACHINERY OF ASSESSMENT

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Authorities and Officials– For a comprehensive account of the administration of the income tax, the reader is referred to the report of the Royal Commission[1]; as there stated, the system in many of its practical developments still lacks legal sanction.[2] Accordingly, only a very brief statement will here be made of the names and nature of the various authorities, which are somewhat confusing.[3] Their statutory powers and duties so far as they affect the persons charged with tax, will be considered in connection with assessment, appeal, collection and so forth; these have been greatly modified by the Act of 1942.[4]

The chief of these authorities, then, is the Board described in the Income Tax Acts as the Commissioners of Inland Revenue, whose seat is at Somerset House, and who have the care and management of the income tax throughout the United Kingdom.[5]

Bodies of General Commissioners are appointed for different Divisions covering the whole of England, Scotland and Wales.[6] Their importance from the taxpayers' point of view is that they hear all appeals against assessments, except in certain cases where the person charged may choose to be assessed by the Special Commissioners, or to appeal to them.

The Special Commissioners[7] are a body of whole-time officials, whose functions extend over the whole country; they have an office in London, but they also sit elsewhere as occasion demands. They make, and hear appeals against, assessments under Schedule D at the request of any taxpayer; they assess income

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[1] Part IV, ss. I—IX, see p. 2, note [16].

[2] See para. 331, and see Report of Codification Committee, 1936, Cmd. 5131, Vol. I, pp. 383 *sqq*.

[3] It is based on the above Reports.

[4] S. 42 and Tenth Schedule, see p. 669

[5] Act of 1918, s. 57.

[6] Ss. 58, 59, the Divisions correspond roughly with the old Land Tax Divisions, Report, para. 339. S. 59 is amended as regards Scotland by s. 30 of the Finance Act, 1930. See also Income Tax Procedure (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 99).

[7] Act of 1918, s. 67; Act of 1942, 10th Sched., para. 5 (4), see p. 671.

tax on railways and on foreign and Colonial dividends paid in this country; and they assess, collect, and hear appeals against, surtax.

Additional Commissioners[8] are appointed for most of the Divisions by the General Commissioners; they are unpaid. A General Commissioner may act as Additional Commissioner. Their duty is to sign, and allow, assessments under Schedules A, B and E, which then become effective, subject to appeal.[9]

Inspectors or Surveyors of Taxes[10] are permanent officials acting under the orders of the Commissioners of Inland Revenue. Although, in the sections of the Act which lay down the powers and duties of these officers in relation to persons chargeable they are generally described as "surveyors," the name "inspector" is now in general use. These statutory powers and duties are many and various; for instance, the inspector has a voice in the making of assessments before they are signed and allowed, appears on appeals, makes all assessments with regard to weekly wage-earners, and initiates action with regard to additional assessments and surcharges. In practice, he is no doubt usually appointed to act for a particular district; but he does not appear to be confined in the exercise of his powers to the district for which he is appointed.[11]

Assessors are appointed annually for each parish by the General Commissioners of the Division.[12] They issue forms of return and exercise various preliminary functions with regard to assessments under Schedules A, B and D.

Speaking generally, collectors have been appointed in England and Wales by the Commissioners of Inland Revenue and will now also be appointed by that body in Scotland and Northern Ireland.[13] The collectors hold office during the will and pleasure of the Commissioners of Inland Revenue; their duties are confined to the collection of the tax, and they may discharge them in every parish or district. The above applies to the City of London;[13a] but not to courts or public departments.

Place of Charge: Schedule A—The areas of jurisdiction of the various authorities dealing with assessment have been indicated above. Under Schedule A, with certain specific exceptions, the tax is assessed and charged upon all properties

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[8] S. 61, Act of 1942, Tenth Sched., para. 5 (1), (3).

[9] *Ibid.*, paras. 3, 4.

[10] S. 75.

[11] Cf. *R.* v. *Southampton Commrs* (see p 391), [1916] 2 K. B. 260, 261; this point did not arise in the C. A., where the decision was reversed on another ground.

[12] Act of 1918, ss. 76 *sqq.*, Act of 1930, s. 29.

[13] Act of 1918, ss. 80 *sqq.*, 197, Act of 1927, s. 30; Act of 1930, s. 29; No 1 Act of 1931, ss. 37, 44 (6), and Third Sched.; Act of 1942, Tenth Sched., paras. 8—10.

[13a] No. 2 Act of 1945, s. 60, p. 792.

in the parish in which they are situate;[14] and the occupier must (under penalty) return statements for each parish in which the land is situate, whether he resides there or not, giving separate estimates for value for land belonging to different owners.[15] If a dwelling-house with any premises occupied therewith is situate in more than one parish, it may be assessed in any one of them at the discretion of the inspector.[16] Lands held under one demise, or occupied by the same person as owner, extending into different parishes in the same Division, may be assessed at the discretion of the Commissioners in either parish;[17] if the lands extend into more than one Division, they are to be assessed in the Division where the occupier resides.

"Parish" means generally a parish for which a separate poor rate was or could be made or a separate overseer was or could be appointed immediately before April 1, 1927, and in the County of London appears to mean the parish of the City of London, and any parish for which a metropolitan borough council may make a separate general rate.[18]

Place of Charge: Schedule D—One of the miscellaneous rules[19] of Schedule D contains directions as to the place of charge of various classes of persons in various contingencies. There is nothing in the language of the rule to confine its operation to the tax charged under Schedule D; but as separate provision is made under Schedules A[20] and E,[21] and as tax under Schedule C is deducted at the source,[22] this would appear to be the intention.

Under this rule,[23] then, every person who "ordinarily resides" in any parish is chargeable in that parish, but there may also be an alternative place of charge; if he has more than one place of ordinary residence (and is not engaged in a trade or profession),[24] he is chargeable at either place; if he has none, he is chargeable at the place where he resides on April 6th of the year of assessment,[25] or at the first place where he comes to reside after that date. The rule does not justify the charging

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[14] Sched. A, No. IX, r. 1, see p. 466.
[15] R. 5, see p. 356.
[16] R. 8.
[17] R. 6.
[18] Act of 1930, s. 29 (2), see p. 560, provision is made as to the date when alterations of parishes for local government administration are to take effect for income tax purposes; as to the meaning of "year of revaluation," see s. 27. The definition "by reference" in s. 29 (2) is very obscure; the definition in the Interpretation Act, 1889, s. 5, which is incorporated by name, has to be read in the light of ss. 10 and 11 of the London Government Act, 1899, and of ss. 5 and 11 of the City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl). As to the Rating and Valuation Act, 1925, see s. 68 (4), with definition of "appointed day" in sub-s. 1.
[19] Misc. Rules, r. 4, see p. 482, takes the place of ss. 106 and 108 of the Act of 1842, and is free from some of the defects which gave rise to the difficulties in *Kensington Commrs.* v. *Aramayo*, [1916] 1 A. C. 215, and *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, see p. 391.
[20] See above.
[21] See p. 369 and note [53].
[22] See p. 64.
[23] See note [19], above. As to the meaning of "parish," see note [18].
[24] R. 4 (3).
[25] R. 4 (5), read with Act of 1942, Tenth Sched., para. 1: see pp. 482, 670. As to year of assessment, see p. 4.

of a person in a parish where he owns a house in which he has not lived for some years, but which has always been either let furnished or to be let.[26] A person who "is" in any parish in the year of assessment may be assessed there, although he is not resident in that parish, or even in the United Kingdom.[27]

As alternatives to assessment at the place of ordinary residence, a householder (if he is not engaged in a trade or profession) may be assessed in the parish in which his dwelling-house is situate although he does not ordinarily reside there;[28] and a person carrying on a trade or profession or more than one trade or profession may be assessed in the parish where each is carried on,[29] even though it is only in part carried on in the United Kingdom; but if the trade is carried on by manufacture he is assessable at the place of manufacture, although the goods are sold elsewhere.[30] As a similar alternative, a person or partnership or body of persons are assessable for the trade of farming in any one of the parishes in which they have farm land; but all the farming carried on by them is to be treated as a single trade.[31]

In no case does a subsequent removal invalidate an assessment already made.[32]

Particulars enabling the authorities to fix the place of charge must be given in any income tax return.[33]

The provision of alternative places of charge does not entitle the authorities to charge any person with tax upon the same income in more than one place; but a person who has two residences, or carries on a trade or profession in different parishes, or in a parish other than that of his ordinary residence, may be called upon to make returns in each place.[34]

The above rules are applicable to income formerly charged under No. II[35] or No. III[36] of Schedule A, and now charged under Schedule D.[37] Railways are assessed by the Special Commissioners.[38]

In order to meet cases where a trade, profession or vocation is carried on in a different parish owing to circumstances connected with with the war, the assessment will be made in

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[26] *R.* v. *Aldrington Commrs.* (1916), 85 L. J. K. B. 1753, see p. 391. The effect of the phrase "ordinarily resident" in connection with foreign possessions is considered pp. 221, 222.

[27] S. 102 (3), see p. 420; *Duckworth* v. *Lowe*, [1937] 2 K. B. 560, see p 274.

[28] Sched. D, Misc. Rules, r. 4 (2), see p. 482.

[29] See Cases I and II, r. 16, proviso, and p. 354.

[30] Misc. Rules, r. 4 (1); in the second limb of the rule the words "within the United Kingdom" appear to mean "wholly or in part within . . . ," although this is not expressed as in the first limb

[31] Act of 1941, s. 10 (3), see p. 651; this provision, of course, does not apply where the farmer is still charged under Sched. B· see p. 55.

[32] R. 4 (5).

[33] R. 4 (7)

[34] R. 5, see p. 356.

[35] See p. 136.

[36] See p 179.

[37] Act of 1926, s. 28, see p. 529

[38] Act of 1918, s. 124, see p. 425.

any parish in which it has been carried on since April 6, 1939, if the person carrying it on gives the inspector notice of a request to that effect (specifying the parish) before the end of June in any year; or if, having received a notice to that effect from the inspector, he does not object within twenty-one days.[39]

Place of Charge: Schedule E—Under Schedule E there are special provisions for assessing officers of the Crown, and of departments;[40] but any person chargeable[41] may also be assessed and charged in any parish in which he ordinarily resides or in which he is employed.[42] If the Commissioners of Inland Revenue consider that owing to circumstances connected with the war, it is expedient that he should be assessed in some other parish, this is to be done; no notice is required.[43]

Assessment: Duties of Assessor—The obligation to make returns, and the notices which make that obligation effective, have been dealt with in Chapter 16. The assessor delivers the returns received to the General Commissioners, together with certain lists,[44] except where the return is made by a person chargeable under Schedule D, and is accompanied by a request for assessment by the Special Commissioners.[45]

If the assessor has not received a return[46] from any person liable, he is, to the best of his information and judgment, to make an assessment upon him under Schedule A or B, if the liability arises under one of them; or if the liability arises under Schedule D, to estimate the profits assessable, and give the person's name and address and other particulars to the Additional Commissioners.[47]

When a return has been delivered, the assessor is not bound to accept it as correct, as far as Schedules A and B are concerned; for the assessments under these Schedules are to contain the "full and just annual values"[48] of the lands, as well as the names of the occupiers and proprietors.[49] And where no estimate of annual value has been received from the occupier of any lands, or the General Commissioners are not satisfied with it, they may, by a signed order to the assessor or inspector, authorise him to view the lands with a person of skill named in the order.[50]

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[39] Act of 1941, s. 21 (1), see p. 658.
[40] Sched E, rr 11, 18; see *Pickles v Foster*, p 255. The provisions referred to in this paragraph now apply only to emoluments connected with the Armed Forces, see p 254.
[41] See Chap. 11
[42] R. 18 (5), see p. 487.
[43] Act of 1941, s. 21 (2), see p. 659; the assessee may appeal against such an assessment to the General Commissioners for either the old or the new parish.
[44] S. 113.
[45] See p. 371.
[46] S. 112; see also s. 107 (2).
[47] S. 121.
[48] See Chap. 2.
[49] S. 110.
[50] S. 116.

Assessors are to deliver their certificates of assessments under Schedules A and B to the Additional Commissioners.[51]

The above duties as far as ascertainments of annual value for Schedules A and B are concerned may be carried out in the "preparatory year."[52]

Assessments under Schedules A, B, and E—The inspector may examine the assessments made by the assessor under Schedules A and B.[53] After he has examined them, the Additional Commissioners are to take them into consideration; if the inspector does not object to them, and those Commissioners are satisfied that they are correct, they shall sign and allow the assessments; if he objects to any of the assessments, and suggests in writing any error, mistake, omission or fraud, they are to the best of their judgment to rectify it[54] and to sign and allow it as rectified.[55] The inspector may also in certain circumstances amend (by way of increase) the assessment made by the assessor, before it is signed and allowed; but not more than six years after the year to which the assessment relates.[56]

The assessment does not become binding so as to impose a charge until it has been signed and allowed,[57] and when it has been signed and allowed, it cannot be altered except upon appeal.[58] As regards Schedule E, a notice of assessment must be given after the signing and allowance before the charge becomes effective;[59] as regards Schedule A or B, there is no longer any obligation to do so.[60] But under Schedule E, and if such a notice is given under Schedule A or B, the time for appealing runs from the date of the notice.[61]

An assessment made in any of the cases specified in rule 8

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[51] S. 113; the Act does not say whether the assessor is bound to accept as correct returns of profits chargeable under Sched. E. The Additional are substituted for the General Commissioners by Act of 1942, Tenth Sched., para. 3; and verification on oath is done away with by para. 2. One Additional Commissioner can act alone: para. 5 (1).

[52] Act of 1930, s. 28 (1); see also s. 27, p. 37. Certain modifications of the provisions, applicable outside London, are made by Part I of the First Sched., see p. 561.

[53] As far as Sched. E is concerned, these paragraphs should be read subject to pp. 250—254, where an endeavour is made to state the effect of the enactments of 1943 and 1944.

[54] S. 120; see note [52], above.

[55] It is perhaps permissible to read this into the section, as well as a power to overrule the objection if it is not shown that any rectification is required.

[56] S. 125 (1) (i) (a), as amended by Act of 1923, s. 29 (1), see pp. 426, 521, the General Commissioners are not bound to accept the amendment. As to fraud or wilful default, see p. 377. In the case of a deceased person, the amendment must be made within three years after the year of assessment in which he died: Act of 1923, s. 29 (3).

[57] *Berry* v. *Farrow*, [1914] 1 K. B. 632; and cf. *R.* v. *Southampton Commrs.*, p. 391.

[58] Act of 1918, s. 133 (1), see p. 429.

[59] Act of 1942, Tenth Sched., para. 6 (2), *Berry* v. *Farrow*, above; see p. 671.

[60] *Ibid.*, para. 6 (1); but as to Sched. B, see Act of 1944, s. 26 (5).

[61] Act of 1918, s. 136 (1), see p. 429.

of No. VII of Schedule A is to be valid, although not made on the right person.[62]

Appeals are dealt with in Chapter 18.

Annual Value—The determination of annual values for Schedules A and B, and all things preliminary to the making of assessments under those Schedules, may be carried out in the "preparatory year,"[63] that is, the year preceding a year of revaluation.[64] Outside London, the provisions referred to above in connection with actual assessments to tax under these Schedules, are applied to the determination of annual values for a year of revaluation, whether determined in the preparatory year or not; notice must be given by the General Commissioners of the annual value determined [65] In London, the taxpayer is not entitled to notice until the tax has actually been assessed.[66]

Appeals are dealt with in Chapter 18.

Assessments under Schedule D—Any person chargeable under Schedule D may at his own option be assessed by the Special Commissioners; if he desires this he must give notice to the assessor in making his return [67]

Apart from cases in which this option is exercised, the returns and the assessor's estimates[68] where no return has been received, are to be laid before the Additional Commissioners,[69] who are to consider them after they have been examined by the inspector.[70] If they are satisfied with the return and the inspector makes no objection to it, they are to direct an assessment to be made in accordance with the return; but the inspector, if he is dissatisfied with their determination (although he made no previous objection) can require the Additional Commissioners to state a case for the opinion of the General Commissioners.[71] If no return, or an unsatisfactory return, has been delivered, or if the inspector makes an objection in writing, the Additional Commissioners are to make an assessment according to their own judgment.[72] They may refer any return to the General Commissioners without making an assessment,[73] and the inspector can ask for an amendment of any assessment made by the Additional Commissioners, at any time before it leaves their hands.[74] If, when an assessment has been made by

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[62] The above is an attempt to assign some meaning to s. 12 (1) of the Act of 1941, see p. 653. but r. 8 only authorises an assessment to be made upon the landlord (see p. 42), and an assessment not made upon him is not "made under rule 8."
[63] Act of 1930, s. 28 (1), see p. 559, see also Chap. 2, p. 27.
[64] S. 27 (2).
[65] First Sched., Part I, see p. 561; as to appeal, see p. 381.
[66] See s. 28 (1), proviso, and the appeal provisions in rr. 2 (b) and 3 of Part II of the Sched., p. 562.
[67] Act of 1918, s. 122, see p. 425.
[68] S. 112 (b), see pp. 356, 366.
[69] S. 121 (1).
[70] S. 121 (2).
[71] S. 121 (4); see also s. 107 (2).
[72] S. 121 (3).
[73] S. 121 (5).
[74] S. 121 (6).

them, the inspector makes an objection in writing, they are to certify it, with their reasons for making the assessment, to the General Commissioners;[75] and the inspector must give notice to the person assessed so that he may appear before the General Commissioners.[76]

As the proceedings described in section 121 are from time to time completed, the assessments are embodied in books and signed by the Additional Commissioners;[77] after the signing a notice of assessment is to be given by the inspector to the person assessed.[78] The person assessed is entitled to appeal within twenty-one days of the date of the notice of assessment.[79]

Appeals are dealt with in Chapter 18.

Assessment under Schedule D by the Special Commissioners—Where a person chargeable has given notice in his return that he requires to be assessed by the Special Commissioners, the assessor forwards the return to the surveyor; and he, after examining the return, is to make an assessment to the best of his judgement, and forward it to the Special Commissioners, who after examining it shall sign and allow such an assessment as appears to them just and proper.[80] The assessor merely forwards the requests and the return to the inspector, and there are no proceedings before either the Additional or the General Commissioners. An appeal lies against such an assessment to the Special Commissioners themselves;[81] and the liability arises only when the assessment has been signed and allowed, the time for appeals has expired, or an appeal brought has been determined, and the Special Commissioners have notified the person charged of the amount of the charge.[82]

Railway Assessments—Assessments on a railway company, in respect of its own profits, are made by the Special Commissioners.[83]

Assessment under General Rule 21—Where any interest, annuity, or other annual payment taxable under Schedule D,

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[75] S. 121 (7); it is difficult to read this provision with that for requiring the Additional Commissioners to state a case contained in sub-s 3, proviso (i), (ii).
[76] S. 121 (8); as to service, see s. 220 (5), p. 449.
[77] S. 122, see p. 425; read with Act of 1942, Tenth Sched., para. 4, p. 671; the signature of one Additional Commissioner is sufficient. para 5 (1)
[78] Act of 1942, Tenth Sched., para. 6 (2). Act of 1944, s 26 (5), see pp. 671, 687, the charge will not be effective without such a notice cf *Berry* v. *Farrow*, p 369.
[79] S. 136 (1), see p. 379.
[80] S. 123 (1) (2), see p. 425. See also p. 356. Signature by one Special Commissioner is sufficient: Act of 1942, Tenth Sched., para. 5 (4), see p. 671.
[81] See p. 379.
[82] S. 123 (3); subject, however, in case of appeal to s. 24 of the Act of 1930, see p. 558.
[83] S. 124, see p. 425. Emoluments paid by the company are within the "Pay as you Earn" system, see reg. 42 (3), p. 708.

or any royalty or other sum paid in respect of the user of a patent, is not wholly payable out of profits or gains brought into charge, the payer is bound to deduct tax in making the payment,[84] and a similar obligation is imposed on a person who pays royalties or periodical sums in respect of certain copyrights.[85] The person by or through whom the payment of the interest, royalty, etc., was made is to deliver an account to the Commissioners of Inland Revenue; and he is to be assessed by the Special Commissioners in respect of the payment made, so far as it is not "made out of profits or gains brought into charge." There is a penalty of £100 for neglect or refusal to deliver such an account. If no account is delivered, or if the Special Commissioners are not satisfied with the account delivered, they may make an assessment according to the best of their judgment.[86]

Errors in Assessments : Double Assessment—Errors of form are not to invalidate "assessments" or "charges"; provided that a notice of charge[87] has been duly served on the person intended to be charged, and that that notice contains in substance and effect the particulars on which the charge is made.[88]

But if a person has, either on his own account or on another's, been assessed twice over for the same year for the same cause and on the same account, he may apply to the General Commissioners for the Division where the second assessment was made, and have it vacated: there is no limit of time for making the application: the Commissioners of Inland Revenue have a similar power to that of the General Commissioners; and if it is proved to the Commissioners of Inland Revenue that payment has been made on both assessments, they shall order repayment.[89]

Additional First Assessments—If the inspector "discovers" that in the assessments thus made any properties or profits chargeable to tax have been omitted, that any person has not been assessed, or has been undercharged, or has obtained any unauthorised allowance, deduction or relief,[90] or that any person

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[84] General Rule 21 (1), see p. 195.

[85] Act of 1927, s. 25. Act of 1930, s. 18, see p. 203.

[86] General Rule 21, paras. (2), (2A), (2B) (see p. 491), substituted by Act of 1927, s. 26, so as to get rid of the effect of the decision in *Re Lang Propeller, Ltd.*, [1927] 1 Ch. 120. The provisions for appeals, additional assessments, and so on, apply under these paragraphs as to any assessment under Sched. D which the Special Commissioners have power to make: r. 21 (2B).

[87] As to service of notice of assessment or "charge," see p. 371.

[88] S. 216, see p. 448. The section presents great difficulties: as to the various meanings of "assessment" and "charge" in these Acts, see *Kensington Commrs. v. Aramayo*, p. 6, per Lord Wrenbury, [1916] 1 A. C. 227. The writer is unable to suggest what is meant by "hearing and determining" a charge.

[89] S. 151, see p. 435. As to error due to a mistaken return, see p. 391.

[90] An allowance obtained by a married man is not brought within these words by a subsequent decree of nullity on the ground of incapacity: *Dodsworth v. Dale*, [1936] 2 K. B. 503.

has not made a return, or has not made a full return, an "additional first assessment" may be made.[91] Legal evidence of any of these matters is not necessary as a preliminary; but there must be information before the inspector "which would enable him, acting honestly, to come to the conclusion" that such a state of facts exists.[92] The question of legal proof only arises if and when the additional assessment becomes the subject of appeal. It is not lawful to make an additional assessment by reason of an event which takes place after the year of assessment to which it relates.[94] A mere change of opinion by the inspector upon the same facts and figures, has been held in England not to entitle him to make an additional assessment,[94] unless, apparently, the change takes place upon a question of law.[95]

Where the discovery is made after the first assessments have been signed and allowed,[96] the inspector certifies the particulars (where the tax is chargeable under Schedule A, B. or E) to the Additional Commissioners, who then (it appears) have jurisdiction to determine the facts after considering the particulars certified to them, and to sign and allow such an additional first assessment as they find to be correct.[97] Such an additional assessment is subject to appeal,[98] as in the case of a first assessment.

Where the tax is chargeable under Schedule D,[99] the Additional Commissioners[1] "shall make . . an additional first assess-

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[91] S. 125, see p 426.

[92] *R.* v. *Bloomsbury Commrs.*, [1915] 3 K. B. 768, see p 347, following the decision of the K. B. D. on this point in *R* v. *Kensington Commrs.*, [1913] 3 K. B. 870.

[93] *Anderton and Halstead, Ltd.* v *Birrell*, [1932] 1 K. B. 271; *Dodworth* v *Dale*, above. As to defalcations subsequently discovered, see *Gray* v. *Penrhyn*, p 101.

[94] *Anderton and Halstead, Ltd.* v *Birrell*, above, see *British Sugar Manufacturers, Ltd* v. *Harris*, [1938] 2 K. B. 220 (C. A.) The Scottish Court took a contrary view in *I. R.* v. *Mackinlay's Trustees*, [1938] S. C. 765, 22 Tax C. 305. The fact that there has been an appeal against the original assessment does not of itself prevent the making of an additional assessment *Anderton, Ltd* v. *Birrell*, above.

[95] *Williams* v. *Grundy's Trustees*, [1934] 1 K. B. 525. The writer is unable to detect any other distinction between this case and *Anderton's*, in both cases the facts had been fully disclosed. In *Multispar Syndicate, Ltd.* v. *Devitt*, [1945] 1 All E. R. 298, they had not.

[96] If they have not been signed and allowed, the inspector may himself amend them, see p. 369. As to Sched. E, see note [53].

[97] S. 125 (1) (i) (b); Act of 1942, Tenth Sched., para 3, an Additional Commissioner can act alone: para. 5 (1); see *R.* v. *Bloomsbury Commrs.* (note [7], below), *per* Lord READING, L.C.J., [1915] 3 K. B. at 782. As to Sched A, see also *Elman* v. *Stone Hills* v *London Freehold, etc. Co.*, p 37.

[98] See Chap. 18. If there are facts which warrant inquiry by the General Commissioners, the Court will not, by prohibition, prevent them from making an additional assessment: *R.* v. *Marylebone Commrs., Ex p. Schlesinger* (1928), 13 Tax C 746. The remedy is by appeal against the assessment.

[99] S. 125 (1) (ii); Act of 1942, Tenth Sched., para. 5 (1): one Additional Commissioner can act alone. Notice of assessment must be given: para 6 (2), p. 671

[1] Moved thereto, of course, by the inspector; but this is not expressed here as in the previous paragraph.

ment . . . in such a sum as according to their judgment ought to be charged."[2] Such assessment is "made" by being signed;[3] subject to objection by the inspector[4] and to appeal.[5] The additional first assessment having been thus made, does not now appear to require allowance and confirmation by the General Commissioners,[6] but the Additional Commissioners have jurisdiction to determine the facts.[7]

An additional first assessment may be made not later than six years after the end of the year for which the charge ought to have been made.[8] It is sufficient under Schedule D if the assessment is "made" as above described within the time limited; the notice of assessment need not be given within that time.[9] It may be made by Additional Commissioners for the Division in which the original assessment should have been made, though the taxpayer has since removed.[10]

Apart from "discovery," additional assessments under Schedules D and E are authorised in certain specific cases, and the above provisions will apply according to the Schedule under which they are made. Such assessments may become necessary under Schedule D on the permanent discontinuance of a trade,[11] on a decision by the Commissioners of Inland Revenue as regards the account year on which the profits of a trade, etc., are to be computed.[12] and on ceasing to possess a source of income chargeable under Case III, Rule 1, Case IV, or Case V;[13] under Schedule E, where an office, employment or pension connected with the Armed Forces comes to an end.[14]

Under the provisions of Part III of the Act of 1938 which relate to income during administration, assessments, additional assessments and adjustments of assessments, which are found

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[2] An additional assessment may be made in the district of the inspector who made the discovery, although the original assessment was, or should have been, made elsewhere: *Johnstone* v *Chamberlain* (1933), 17 Tax C. 706.

[3] *Pickford* v. *Quirke* (1927), 13 Tax C. 251. [4] See s. 121 (7), and p. 371.

[5] The question whether there has been a "discovery" may arise on the appeal: *Anderton and Halstead, Ltd* v *Birrell*, see note [94], above. As to appeals, see Chap. 18.

[6] Act of 1940, Tenth Sched., para. 4 (1), appears to apply to additional assessments, as well as to assessments under Sched. D, though, in view of the judgments in *Pickford* v. *Quirke* (below), this might perhaps have been expressed.

[7] *R.* v. *Bloomsbury Commrs.*, [1915] 3 K. B. 768, decided under Taxes Management Act, 1880, s. 52; the reasoning seems equally applicable under the enactments just cited.

[8] Act of 1918, s. 125 (2), as amended by Act of 1923, s. 29 (1), see p. 426; as to fraud or wilful default, see p. 377. In the case of a deceased person, the time does not extend beyond the third year of assessment in which he died. Act of 1923, s. 29 (3). But as regards income affected by the law relating to Trading with the Enemy, see Act of 1944, Fourth Sched., Part I, para. 9. As to e.p.t. and n.d.c. adjustments, see No. 2 Act of 1945, s. 27, p. 784.

[9] *Pickford* v *Quirke* (1927), 44 T. L. R. 15; 13 Tax C. 251. See note [89], above.

[10] *Kelly* v. *Rogers*, [1935] 2 K. B. 446.

[11] Act of 1926, s. 31 (1) (a), (b), see p. 146. As to successions being treated as a discontinuance, see Sched. D, Cases I and II, r. 11 (1), proviso, see p. 148.

[12] S. 34 (2), see p. 142.

[13] S. 30, proviso, see p. 531, read with s. 31 (1).

[14] Act of 1927, s. 45 (5), see p. 255. See also reg. 47 (9), p. 770.

to be required on the completion of administration, may be made up to the end of the third year of assessment after that in which the completion took place.[15]

The provisions of section 125 are applied (outside London) to the determination of annual values for Schedules A and B (apart from the actual assessment of tax) for a year of revaluation;[16] such a determination may therefore be revised for similar reasons, and during a similar period, as an assessment of tax under those Schedules.

Surcharges—A surcharge is another form of retarded assessment; this method of procedure gives the revenue authorities somewhat wider powers than they possess in proceeding by way of additional first assessment; but it is available only if the person in question has not been charged to income tax for the year.[17] If the inspector "discovers"[18] that this is so, he may surcharge the person liable.

He can only do so, and must certify the General Commissioners that he has done so,[19] within six years after the expiration of the year of assessment for which the person liable ought to have been charged; the latter is entitled to notice,[20] and as the date of service has to be stated in the certificate[21] the notice also must be given within the time limited.

Within ten days from the service of the notice, the person to whom it has been given may, whether he has previously made a return or not, deliver to the inspector a correct return, or give him notice in writing that he abides by his previous return; but he must annex to the return or notice a declaration signed and attested by witnesses.[22]

In the meantime, the inspector has certified the surcharge to the General Commissioners;[23] but they can take no action till the ten days have expired.[24] Service of the notice must be proved on oath.[25] If a return or notice and declaration have been delivered within the ten days, and the inspector

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[15] Act of 1938, s. 34 (1), (2), (3), see pp 325—327

[16] Act of 1930, s. 28 (1), First Sched., Part I, r. 4; see Chap. 2, p 37

[17] Act of 1918, s. 126 (1), see p 426 The Royal Commission in para. 427 of their report say that the power of making a surcharge is "confined to cases where there has been no previous assessment on the source of income in question"; but the Act makes no reference in this connection to different sources of income, or different Schedules; and the income tax is one tax: *London County Council* v. *Att.-Gen.*, see p. 3. See also Report of 1936, Vol I, 331 – 332.

[18] The word here doubtless bears the same meaning as in s. 125 (1): see p. 426.

[19] Act of 1918, ss. 126 (1), (2), 129 (5), as amended, see p. 428; as to fraud, etc. see p. 377. The time is more limited in the case of a deceased person: see note [9].

[20] Act of 1918, s. 126 (2); as to the method of service, see s. 220 (5), p. 449.

[21] S. 126 (6).

[22] S. 127 (1), (2); the heads of this declaration, which might almost be called a confession, will be found in sub-s. 2 (a)—(e), penalties for fraud are provided in sub-s. 3.

[23] S 126 (2); see also s. 129 (6).

[24] S. 126 (4).

[25] S. 126 (3) and (6).

certifies his satisfaction to the General Commissioners, they are to charge the person on the amount set out in the return "in single rate of tax."[26]

If, however, a return or notice by the person surcharged and a declaration have been delivered within the ten days, and the inspector serves a notice of objection on the person surcharged, and certifies to the General Commissioners the cause of his objection, the delivery of the return or notice and declaration operates as a notice of appeal to them against the surcharge.[27] And even if the return or notice and declaration have not been delivered within the ten days, the person surcharged may appear before the General Commissioners personally or by agent "on the day appointed for hearing appeals against surcharges," and deliver a return and declaration, in which case the General Commissioners may hear his appeal.[28]

Appeals are to be heard as in the case of first assessments,[29] the burden of proof is on the person surcharged and it is for him to show that the contents of the certificate and notice of surcharge are incorrect.[30]

In certain circumstances (connected with the date and notice of appeal meetings)[31] the Commissioners are to sign and allow the certificate first, and to hear and determine appeals afterwards.[32]

Upon appeal, the General Commissioners may either increase or reduce the surcharge;[33] if it is allowed in whole or in part, the assessment is made in treble the rate of tax, unless they find that the inspector might have amended the assessment by means of the original return, that there was no intent to defraud on the part of the person charged, that he was prevented by sufficient cause from making an amended return, or that there was reasonable cause of doubt as to his liability or as to the amount of it.[34]

If there is no appeal,[35] the General Commissioners are to confirm the certificate of surcharge;[36] they have apparently no power to increase or reduce the amount, nor is there any power to levy treble tax,[37] unless the case is one of default in connection with returns and so comes within the purview of section 107.[38]

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[26] S. 127 (4); the Commissioners are presumably to sign and allow a supplementary assessment on the surcharge as amended: see s. 130 (2) (a).
[27] S. 128, read with s. 129 (1).
[28] S. 129 (2). "may" here seems to mean "must."
[29] S. 137 (6) (a), see p. 430; see also Chap. 18
[30] Ss. 126 (5), 137 (4).
[31] S. 137 (6) (a) should be read with s. 135.
[32] S. 129 (4). It is difficult to see the object of this provision.
[33] S. 137 (4), (5).
[34] S. 137 (6) (b)
[35] See above as to what constitutes an appeal.
[36] S. 129 (3).
[37] Sub-ss. (4), (5) and (6) (b) of s. 137 apply only where there is an appeal.
[38] See p. 369.

Fraud or Wilful Default—The limits of time for amending or making assessments, additional assessments and surcharges are extended indefinitely where any form of fraud or wilful default has been committed by or on behalf of the person sought to be assessed or surcharged: this provision runs retrospectively so as to include tax for 1936—37 and any subsequent year.[39] It does not apply where the person by or on whose behalf the fraud, etc., was committed is dead and only his personal representative can be reached.[40] An objection on the ground that the period of limitation has expired, is only to be made on appeal from the assessment, additional assessment or surcharge;[41] this last provision does not appear to be confined to cases of fraud or wilful default, but it applies (*inter alia*) to the objection that no fraud or wilful default has been committed.

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[39] Act of 1942, s. 33 (1), see p. 668.
[40] Sub-s. 4.
[41] Sub-s. 3, this sub-section seems intended to oust the jurisdiction of the High Court in prohibition or *certiorari*, but see pp. 390, 391.

CHAPTER 18

APPEALS AND OTHER REMEDIES OPEN TO THE SUBJECT

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Right of Appeal—Any person aggrieved by an assessment upon him has a right of appeal against that assessment, under whatever Schedule it is made,[1] including Schedules A and B; but appeals in relation to these will be separately considered.[2] In addition. rights of appeal are expressly given with regard to the following kinds of assessment:—

Retrospective assessments or additional assessments (including directions or claims for repayment), consequential on the selection of accounting periods by the Commissioners of Inland Revenue for the purposes of Case I of Schedule D. The appeal may be brought before the General or the Special Commissioners.[3]

Assessments in respect of surtax generally;[4] and decisions by the Special Commissioners in connection with sales and purchases *cum* dividend and with income attributable to a period exceeding one year;[5] all these appeals go before the Special Commissioners.

Assessments made in respect of annual payments, royalties and other sums not wholly payable out of profits or gains brought into charge;[6] such appeals go before the Special Commissioners.

Notices served on landlords charged as such under Schedule A, No. VII, rule 8, but not named in the assessments.[7]

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[1] Ss. 136, 147, 148, see pp. 429, 434. Parts VI and VII of the Act of 1918 are obscure; but s. 136 appears to apply to assessments by whomever made, and under whatever schedule, except those made by the Special Commissioners, which are dealt with in s. 147. See also s. 208, which replaces s. 188 of the Act of 1842: *Berry* v. *Farrow* [1914] 1 K. B. 632, 638. The powers and duties of Commissioners as to appeals by employees are preserved by Employments Regulations, 1944, reg. 45 (3), p. 768.

[2] See p 379.

[3] Act of 1926, s 34 (3), see p 145.

[4] Act of 1927, s. 42 (7); see Chap. 15.

[5] Act of 1927, s. 26 (2); see ss. 23, 24, 25, pp. 345—347. The rights of appeal in connection with surtax on the income of companies under s. 21 of the Act of 1922 and s. 31 of the Act of 1927 are considered in Chap. 15.

[6] General Rule 21 (2a), see p. 196.

[7] Act of 1941, s. 12 and First Sched., Part I, see pp. 42, 370.

Except as noted above, appeals in general are brought before the General Commissioners;[8] but if an assessment under Schedule D has been made by the Special Commissioners,[9] the appeal is brought before that body.[10] And even if the Special Commissioners have not made the assessment, the person assessed may elect to have his appeal brought before them in the case of an assessment under Schedule D[11] or Schedule E.[12]

These rights extend so as to allow appeals against first and additional first assessments, against objections by the inspector, and against surcharges.[13]

Certain questions as to the valuation of trading stock in the assessment of the profits of a discontinued trade (or of a trade which is so treated) are to be determined by way of appeal—by the General Commissioners if the assessments of the profits of that trade and of the trade which acquires the stock are both within the jurisdiction of the same body; otherwise, or if all the parties consent, by the Special Commissioners.[14]

A claim[15] for any relief by way of deduction of tax, if the inspector objects to it in writing, is heard by way of appeal by the General Commissioners.[16] Such an appeal can apparently be heard by the Special Commissioners if the assessment has been made by them under Schedule D, or if it is made under Schedule D or E and the claimant so elects: except that any claimant for total exemption on the ground that his income does not exceed £120[17] can appeal only to the General Commissioners. Appeals from decisions of the Commissioners of Inland Revenue on the question whether the claimant's status or residence[18] entitles him to such relief, or to relief in respect of life insurance premiums and similar payments, are brought to the Special Commissioners.[19]

A similar right of appeal exists against decisions of the Commissioners of Inland Revenue on certain questions of residence or domicil.[20]

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[8] Act of 1918, s. 136 (1), see p. 429; see also Act of 1941, s. 21 (2), proviso, p. 659.

[9] See p. 371.

[10] Act of 1918, s. 147, this provision extends to assessments under Misc. Rule 7, see p. 184. *Re Canadian Eagle Oil Co., Ltd.*, [1944] W. N. 167 (C. A.).

[11] S. 148, see p. 434.

[12] Finance Act, 1922, s. 19, see p. 508, reg. 45 (3), p. 768; and see note [1].

[13] Ss. 136, 137, 148. See also Act of 1942, s. 33 (3), p. 377.

[14] Act of 1938, s. 26 (2), see p. 604, the preamble to sub-s. 2 refers to the profits of both trades, while the preamble to sub-s. 1 refers to those of the discontinued trade alone; and the "question" can only arise under sub-s. 1 (a), see p. 161. The solution offered above is the best the writer is able to suggest. [15] See p. 362.

[16] Act of 1918, s. 27 (5), see p. 409, replacing s. 164 of the Act of 1842; and see *per* SWINFEN EADY, L.J., in *Furtado* v. *City of London Brewery Co.* (p. 392), [1914] 1 K. B. 714; Act of 1927, s. 41 (2). These enactments are in a very confused state; cf. succeeding notes.

[17] Act of 1918, s. 148 (3); this provision seems obsolete; the limit for exemption is now £120: see p. 8. [18] See pp. 9, 10, above; and see p. 385.

[19] Act of 1927, s. 41 (3), proviso; Act of 1926, s. 20; Act of 1925, s. 19 (3); Act of 1920, s. 24 (1), proviso; see pp. 543, 528, 526, 498.

[20] Act of 1924, s. 27; these questions are indicated p. 385.

Claims by charitable bodies for exemption in respect of income derived from various sources and of lands owned and occupied by them, if refused by the Commissioners of Inland Revenue, may be the subject of appeal to the Special Commissioners; as may claims for repayment of tax on interest on advances made by banks, stockbrokers and discount-houses;[21] as well as claims in respect of diminution of income due to the war;[22] and claims for spreading of lump sums paid for copyright royalties.[23]

An appeal lies against an assessment, even though it is based on an inaccurate return made by the appellant.[24] Once a notice of appeal has been given, it cannot be withdrawn so as to prevent the Appeal Commissioners from increasing the assessment.[25]

Time for Appealing: Notice of Appeal—Notice of appeal must be given within twenty-one days after the date of any notice of assessment, objection or surcharge appealed against; the notice must be given in writing to the inspector.[26] If the person assessed under Schedule D or E elects to appeal to the Special Commissioners, this must be stated in the notice.[27] In any case, if the appeal is against an assessment under Schedule D, the grounds of appeal must be specified in the notice; but the Commissioners hearing the appeal may allow the appellant to go into any ground not so specified, unless the omission was wilful or unreasonable.[28]

Special provision is made for extension of time in cases of absence, sickness or other reasonable cause,[29] as well as for cases of removal.[30]

It is no longer necessary to give notice of an assessment under Schedule A or B; and any person who has not been served with such a notice may give notice of appeal against an assessment by which he is aggrieved within twelve months from the end of the year of assessment to which it relates.[31]

The limit of time for appeals in relation to income which is or was affected by the Trading with the Enemy law is relaxed by the Act of 1944.[32]

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[21] Act of 1925, s. 19, see p. 392.

[22] No. 2 Act of 1939, s. 11 (6), see p. 633.

[23] Act of 1944, s. 24, see p. 685.

[24] *Holborn Viaduct Land Co.* v. *The Queen* (1887), 2 Tax C. 228, see p. 390.

[25] *R.* v. *Special Commrs., Ex p. Elmhirst*, [1936] 1 K. B. 487; see p. 384, note [70].

[26] Act of 1918, s. 136 (1), p. 429; s. 148 (1), p. 434; Reg. 45 (1), p. 768. See also note [1]. The above does not apply to appeals against decisions of the Commissioners of Inland Revenue on questions of residence and domicil, see p. 385; and as to appeals relating to Scheds. A and B, see below.

[27] S. 148 (1).

[28] Act of 1926, s. 25 (1), see p. 539.

[29] Act of 1918, s. 136 (3); see note [65], p. 382.

[30] S. 136 (4).

[31] Act of 1942, Tenth Sched., para. 6 (3).

[32] Fourth Sched., Part I, paras. 7, 9, p. 692.

Appeals in relation to Schedules A and B—Outside London, the annual value for the purpose of assessment under Schedule A or Schedule B for a " year of revaluation " is to be determined separately, it may be in the previous or " preparatory " year;[33] the actual assessment to tax is made later. A person aggrieved,[34] including an owner or other person in receipt of rent for the lands as regards the annual value for the purposes of Schedule A,[35] may appeal against that determination as if it were an assessment to tax;[36] the time within which any person aggrieved is entitled to appeal is forty-two days after the date of notice of the determination of the annual value for purposes of Schedule A.[37]

This right does not, however, detract from the right of appealing against an assessment of tax for the year of revaluation which is possessed by the classes of persons above indicated; also, in the case of any occupier, owner or other person in receipt of rents, to whom a notification of the annual value determined has not been delivered, he may appeal against an assessment to Schedule A tax for that year by giving notice within twelve months after the end of the year,[38] and is not confined to the ordinary period of twenty-one days.

In London there is no separate right of appeal against a determination of annual value, but the persons above indicated may appeal against any first assessment to tax under Schedule A made for a year of revaluation within forty-two days after the date of the notice of assessment to tax;[39] and any of them to whom a notification of the annual value was not delivered has the same extended right of appeal as in the rest of the country.[40]

As regards any additional assessment to tax under Schedule A for the year of revaluation, and as regards any assessment to tax under Schedule B for that year, the general provisions regarding rights of appeal appear to apply (together with the right of an owner, etc., as regards Schedule A): the notice of appeal must be given within twenty-one days after the date of notice of assessment.[41]

In the above cases the appeal will apparently be dealt with according to the facts of the year preceding the year of revaluation.[42]

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[33] Act of 1930, s. 27 (2), s. 28 (1), First Sched., Part I, see pp. 37, 370 The word " determination " is used in the text to distinguish the fixing of annual value from assessment to tax, in the First Sched. the word " assessment " appears indiscriminately in both senses.

[34] See the sections cited in note [1], p. 378. [35] Act of 1918, s. 136 (2), see p. 430.

[36] Act of 1930, First Sched., Part I, r. 5, see p. 562. See also below.

[37] Part II, r. 2 (a), a person aggrieved only in relation to Sched. B—if there be such—seems obliged to give notice within twenty-one days.

[38] Part II, r. 3; but a landlord who has received a notice under Part I of the First Sched. to the Act of 1941 (see below), is, by r. 7, deprived of this right.

[39] R. 2 (b). [40] R. 3. [41] See pp. 372—374.

[42] Act of 1930, s. 28 (2); but the proviso allows a reduction to the annual value for the year of revaluation if that shows a decrease.

As regards any subsequent year of assessment, not being a year of revaluation, an appeal may be brought against an assessment to tax under Schedule A or Schedule B by the persons above indicated; notice must be given within twenty-one days; the appeal is to be dealt with according to the facts of the year of assessment [43]

A person against whom as a landlord tax under Schedule A is to be recovered, although he is not named in the assessment, is entitled to notice, and if served may appeal to the General Commissioners both on the ground that the amount is excessive, and that he was not the landlord on January 1 in the year of assessment in question; notice of appeal must be given within twenty-one days of the service.[44]

Procedure on Appeals—Every appellant is entitled to notice of the day for hearing appeals.[45]

The Commissioners shall permit the appellant or the Revenue officers to be represented (either *viva voce* or in writing) by counsel or solicitor, and shall hear any member of an incorporated society of accountants.[46] In an appeal against the assessment of annual value for Schedule A or Schedule B, the Commissioners are obliged to hear any agent appointed by the appellant.[47]

The inspector is to be given notice of appeal meetings;[48] and the inspector and assessor are entitled to be present at the hearing of the appeal and to give reasons in support of the assessment, as well as to be present when judgment is given; but they have no right to be present while the Commissioners deliberate in the absence of the appellant or his representative.[49]

It is for the appellant to show that the assessment appealed against is excessive, the Commissioners may examine the appellant on oath or affirmation and may take other lawful evidence adduced by either party.[50] They may summon witnesses and examine them on oath.[51] They are not bound to administer an oath to the appellant if he has informed them of the nature of his evidence and they place no reliance on it; nor is his oath conclusive by itself.[52] On the other hand, the mere refusal to produce books does not of itself justify them

[43] Act of 1923, s. 26 (1), see p. 521; s. 27 (3) of the Act of 1930 is such an enactment as is there referred to.

[44] Act of 1941, First Sched., Part I, see p. 662; see also pp. 42, 370, note [68]. The provisions of Part I should be carefully studied by anyone who is served with such a notice

[45] S. 137 (1), see p. 398, and see *Rutherford* v. *L.-A.* (1931), S. L. T. 405; 16 Tax C. 145.

[46] S. 137 (3), as amended by Act of 1923, s. 25 and Sched. The Special Commissioners have the same powers and duties in hearing appeals as the General Commissioners: Act of 1918, s. 67 (2), see p. 418. Appeals to the Special Commissioners may be heard and determined by two of them. *R.* v. *Hood-Barrs*, [1943] 1 All E. R. 665

[47] Act of 1923, s. 26 (2), see p. 521 [48] S. 135.

[49] S. 137 (2). *R.* v. *Brixton Comrs.* (1913), 6 Tax C. 195.

[50] Act of 1918, s. 137 (4), (2) (b). As to the grounds which may be gone into, see p. 380.

[51] Ss. 144, 145.

[52] *R.* v. *Chew* (1894), 71 L. T. 541; 3 Tax C. 289; *Norman* v. *Golder*, [1945] 1 All E. R. 352.

in deciding against the appellant.[53] They are entitled to insist on production of accounts; but an appeal in which they had decided against the appellant because accounts were not produced, was remitted for rehearing after production of the accounts;[54] as was another appeal, in which the Commissioners had disregarded the accounts produced, without any finding that they were inaccurate.[55]

The Commissioners are not obliged to hear all evidence that may be tendered; if they come to the conclusion that certain evidence will not assist them, they may refuse to hear it,[56] but they must not make any such general rule as that they will never hear expert evidence.[57] It would seem that they may have regard to all the events which have happened up to the time of the hearing, relating to the matters in dispute.[58]

In an appeal against an assessment by Additional Commissioners or in dealing with an objection by the surveyor to such an assessment, the General or Special Commissioners may issue a precept to the appellant to deliver a schedule of particulars in relation to certain specified matters, and to make[59] available for inspection books, accounts or documents in his possession or power;[60] penalties are provided for failure,[61] as well as opportunities for amendment,[62] for objection by the inspector[63] and for answers to further precepts.[64] The schedule delivered is not necessarily conclusive.[65]

When the annual value of lands is in dispute in an appeal under Schedule A or B, the appellant may require a valuation to be made by a person of skill; or the General Commissioners may direct it to be made of their own initiative. Such a valuation when verified on oath by the person who made it is conclusive of the annual value.[66] If no such valuation is made, the Commissioners are to determine the question to the best of their judgment,[66] and are entitled to avail themselves

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[53] *R.* v. *Chew* (1894), 71 L. T. 541, 3 Tax C. 289, *per* RIGBY, L.J. See, however, *Jas. Hamilton* v. *I. R.* (1930), 16 Tax C. 28; and *Haythornthwaite, Ltd.* v *Kelly*, note [59].

[54] *Grahamston Iron Co.* v. *Crawford*, [1915] S. C. 536; 7 Tax C. 25.

[55] *Anderson* v. *I. R.* (1933), 18 Tax C. 320.

[56] *R.* v. *Offlow Commrs.* (1911), 27 T. L. R. 353. In *Gundry* v. *Dunham*, however (see p. 352), SWINFEN EADY, M.R., expressed a somewhat wider view of the duty of the Commissioners to hear evidence tendered.

[57] *R.* v. *Offlow Commrs.*, *per* Lord ALVERSTONE, L.C.J.

[58] See *Smart* v. *Lincolnshire Sugar Co., Ltd.*, p. 107, 20 Tax C. 661, 665, 671.

[59] S. 139, see p. 431. This power does not enable them, where the appellant is a company, to require the production of the shareholders' private pass-books: *Haythornthwaite, Ltd.* v. *Kelly* (1927), 11 Tax C. 657; and it is doubtful if the power referred to in the next note would extend so far.

[60] Act of 1942, s. 35 (2), see p. 609; see also sub-s. 3.

[61] S. 139 (3); s. 146 (2), see p. 434.

[62] S. 140, see p. 361.

[63] S. 141.

[64] S. 143.

[65] *R.* v. *Chew*, above.

[66] S. 138 (see p. 431), applied to appeals against determinations of annual value: Act of 1930, First Sched., Part I, r. 5, see p. 502. The valuation must, of course, be made according to the rules of the Schedule: *Stewart* v. *Lyons* (1934), 19 Tax C. 79; *Lyons* v. *Collins*, [1937] 1 K. B. 353.

of their personal knowledge of the value of property in the district and of the nature and history of the property in question.[67] They may even adopt the valuation current for rating purposes.[68]

The Commissioners may confirm or alter the assessment;[69] they may either reduce it or increase it.[70] If they increase the assessment above the amount shown in the appellant's return or schedule, they may charge him with treble duty on the excess, unless they are satisfied that he has not been fraudulent, or grossly or wilfully negligent.[71] A similar penalty applies if he has neglected or refused to deliver a return or schedule.[72] Treble tax is also leviable on a surcharge upheld on appeal, if there are no extenuating circumstances.[73]

The determination of the Commissioners on an appeal is final, and the assessment cannot be altered thereafter save where a case is required to be stated by them;[74] a withdrawal of the appeal by the appellant is not a determination by the Commissioners.[75] This provision is of course subject to the various rights of application for adjustment or repayment.[76] The determination of an appeal against an assessment for one year does not prevent the making of an additional assessment for the same year, if new facts are discovered,[77] nor, on the other hand, does it create an estoppel by *res judicata* so as to prevent a point that has already been raised in one appeal from being raised on appeal against the assessment for a subsequent year.[78]

The general principles upon which the Courts will or will not interfere by *mandamus* or *certiorari* with the exercise of a judicial or quasi-judicial jurisdiction[79] apply to decisions of General or Special Commissioners on appeals under the Income Tax Acts. If the Commissioners have addressed their minds to the right question with which they are empowered to deal, the Courts will not interfere and will not consider whether that question has been answered rightly or wrongly.[80]

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[67] *Stocks* v. *Sulley* (1889), 1 F. 1020, 4 Tax C. 98; see p. 35.

[68] Apparently without forming a judgment of their own. *Denny* v. *Dawes* (1937), 21 Tax C. 65.

[69] Ss. 137 (4), 142. In reading the latter section it should be borne in mind, as pointed out above, that the Schedule is not conclusive. See *Eagles* v. *Rose* (1945), 24 A. T. C. 235.

[70] S. 137 (5). See *Ex p. Elmhirst*, p. 380, note [24].

[71] S. 146 (1) (a), see p. 433.

[72] S. 146 (2).

[73] S. 137 (6). As to surcharges, see p. 375.

[74] S. 133 (2), (3), see p. 429. See *Rutherford* v. *L.-A.* (1931), 8 L. T. 405; 16 Tax C. 145; see p. 390.

[75] *Gundry* v. *Ingham* (1915), 7 Tax C. 12, see p. 37.

[76] See p. 391.

[77] See *Anderton and Halstead, Ltd.* v. *Burrell*, [1932] 1 K. B. 271, p. 278.

[78] *I. R.* v. *Sneath*, [1932] 2 K. B. 362; *Pattuck* v. *Lloyd* (1944), 171 L. T. 340.

[79] *R.* v. *Special Commrs.* (1888), 21 Q. B. D. 313, see p. 320; and see, *e.g.*, *Board of Education* v. *Rice*, [1911] A. C. 179.

[80] Cf. *R* v. *City of London Commrs.*, p. 151. Mandamus where no appeal is provided is referred to, p. 298.

Appeals on questions of Residence and Domicil—There is a right of appeal to the Special Commissioners from a decision of the Commissioners of Inland Revenue on the following questions of domicil and residence: namely, whether an individual is resident in the United Kingdom so as to be entitled to the earned income and other reliefs by way of deduction, or is within the excepted classes of non-residents who are so entitled;[81] whether a person is not ordinarily resident, and therefore exempt from tax in respect of War Loan interest, etc.;[82] or is not resident, and therefore exempt from tax in respect of interest on foreign and colonial securities,[83] or on the stocks, etc., of foreign and colonial companies, or in respect of Indian annuities;[84] whether a person is not domiciled or not ordinarily resident, so as to make him chargeable, in respect of the income from foreign securities, stocks, shares and rents, only on the amounts received in this country.[85] Notice of application or appeal must be given within three months from the date of notice of the decision of the Commissioners of Inland Revenue; and the appeal is to be heard as if it were an appeal against an assessment under Schedule D.[86]

Case Stated—When an appeal has been determined, either the appellant or the inspector "if dissatisfied with the determination as being erroneous in point of law," is entitled to have a case stated for the opinion of the High Court.[87] The existence of a further right of appeal to a Board of Referees, as under section 21 of the Finance Act, 1922, does not prevent the statement of a case.[88] In order to have a case stated, the dissatisfied party must declare his dissatisfaction to the Commissioners who heard the appeal immediately the determination is pronounced.[89] After that declaration and within twenty-one days after the determination, the dissatisfied party must by notice in writing to their clerk "require the Commissioners to state and sign a case for the opinion of the High Court thereon"; he must also pay the clerk a fee of £1.[90] If, after such a notice has been given on behalf of the Crown, the

[81] Act of 1920, s. 24 (1), proviso, see p. 9. The right of appeal is given by s. 20 of the Act of 1926, and preserved by the proviso to s. 41 (3) of the Act of 1927, see pp. 528, 543.

[82] Act of 1918, s. 46 (1), see p. 63; Act of 1924, s. 27 (3) (a), see p. 523.

[83] Sched. C, r. 2, see p. 63; Act of 1924, s. 27 (3) (c) (i).

[84] Sched. D, Misc. Rules, r. 7, see pp. 184, 191. Act of 1924, s. 27 (3) (c) (ii)

[85] Sched. D, Cases IV and V, see Chap. 9; Act of 1924, s. 27 (3) (b).

[86] Act of 1924, s. 27 (1), (2); Act of 1925, s. 19 (2); Act of 1926, s. 20, see pp. 522, 526, 528.

[87] Act of 1918, s. 149, see p. 434. *Smith* v. *Williams*, [1922] 1 K. B. 158. Act of 1924, s. 27; Employments Regs., 1944, reg. 45 (3), p. 768

[88] *D. Carlaw & Sons, Ltd.* v. *I. R.*, 1926 S. C. 870, see p. 336.

[89] S. 149 (1) (a); even though the hearing has taken place after a remitter on a fresh issue: *Burston* v. *I. R.* (1945), 61 T. L. R. 389.

[90] S. 149 (1) (b) (c); *R.* v. *Edmonton Commrs.*, [1929] 1 K. B. 220. If one of two Special Commissioners who heard the appeal dies, a case signed by the survivor is competent: *Norman* v. *Calder* [1944] W. N. 116, 222.

respondent dies, the proceedings will nevertheless be continued;[91] so also the executor may continue the proceedings if the taxpayer dies after the notice has been given by him.[92]

When the case has been stated and signed, the party requiring it must transmit it to the High Court within twenty-one days after receiving it, and must at or before transmission send a copy to the other party with a notice in writing that the case has been stated on his application.[93] The terms of the case are, in practice, often agreed between the parties,[94] being drafted in the first instance by the party requiring it, but the Commissioners are by no means bound to allow this, and the parties are in their hands as to the manner in which the case is stated.[95]

The tax has to be paid nevertheless according to the assessment of the Commissioners;[96] but if the High Court alters the amount of assessment, any excess paid is refunded with such interest as is allowed by the High Court,[97] and any under-payment is recovered as arrears of tax, of course without penalty.[98]

Procedure in the High Court on a Case Stated—In England, a case stated by Commissioners is dealt with in the King's Bench Division on the Revenue Side, and the Rules of the Supreme Court do not apply,[99] except as provided by Order LXVIII. r. 2. The case is filed in the King's Remembrancer Department, where the correct procedure should be ascertained.[1] The case may be set down for hearing by either party.[2]

The case is heard by a single Judge.[3] There is an appeal to

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[91] *Smith* v. *Williams*, above.

[92] *Fitzgerald* v. *I. R.*, [1919] 2 K. B. 154, see p. 328.

[93] S. 149 (1) (d), (e); if the original respondent is dead, the copy and notice may be served on or by his executor, and the High Court will add him as respondent or appellant: *Smith* v. *Williams*, *Fitzgerald* v. *I. R.* Where the inspector of taxes has required the case, delivery at the office at which he was employed when the appeal was heard amounts to receipt of the case by him, and he must comply with the condition stated in the text: *Grainger* v. *Singer*, [1927] 2 K. B. 505.

[94] See *Manchester Corpn.* v. *Sugden*, [1903] 2 K. B. 171, below.

[95] See p. 385; see also *Haythornthwaite* v. *Kelly* (1927), 11 Tax C. 657. As to the form in which it should be stated, see *per* Viscount Simon, L.C., in *Bomford* v. *Osborne*, [1942] A. C. 22.

[96] As to recovery while a special case is pending, see *Att.-Gen.* v. *Avelino Aramayo & Co.* [1925] 1 K. B. 86.

[97] Or the Court of Appeal or the House of Lords, as the case may be: see *Lord Glanely* v. *Wightman* (1933), 17 Tax C. 634, 677.

[98] S. 149 (4); on an appeal with regard to a claim for allowance or deduction in respect of income on which tax has been deducted at the source, no interest can be allowed, because there is no "assessment": *Brennan Trustees* v. *Scanlan*, [1928] W. N. 114. As to recovery of arrears, see p. 404.

[99] R. S. C., Ord. LXVIII, r. 1.

[1] It is founded on the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), the Rules made thereunder dated June 22, 1860, and R. S. C., Ord. XXXIV (Special Case), so far as this is applicable.

[2] See *Tarn* v. *Scanlan*, [1928] A. C. 45.

[3] Owing to Ord LIX. r. 1 (d), having been annulled by R. S. C., July, 1901, r. 8.

the Court of Appeal[4] and (with leave) to the House of Lords.[5] In Scotland, an appeal lies from the Court of Session as the Court of Exchequer in Scotland to the House of Lords.[6]

The High Court "has to decide whether the determination was or was not erroneous in point of law, and any point of law that can be raised properly upon the facts found by the Commissioners the Court can decide";[7] but it will not deal with any question that does not arise on the case stated.[7] The Court may reverse, affirm, or amend the determination, remit the matter to the Commissioners for consideration and decision, or make such other order as it deems fit;[8] or may return the case to be amended and returned before the Court gives judgment.[9] As to costs, the Court has a discretion, to be exercised in the same manner and on the same principles as in cases between subjects.[10] In England, the costs may include the costs of settling the case, incurred before it is filed;[11] the contrary has been held in Scotland.[12]

It seems very doubtful whether a decision on a case stated with regard to a former assessment is conclusive with regard to an assessment for a later year on the same person, except perhaps, where the question of liability depends on personal status;[13] it clearly is not so if the facts are in any way different.[14]

What is a Question of Law?—In an appeal the Commissioners are the sole judges of fact;[15] and the function of the High Court in dealing with a case stated is only to hear and determine any question of law arising on the case.[16] Upon cases stated under the Income Tax Acts as upon special cases of other kinds, there

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[4] S. 149 (3). In England Ord. LVIII applies, and notice of appeal to the C. A. must be given before the expiration of fourteen days from the time when the order of the K. B. D. is signed, entered, or otherwise perfected: Ord. LVIII, rr. 3, 9, 15; *cf. Onslow* v. *I. R.* (1890), 25 Q. B. D. 465. See also *Norman* v. *Golder*, [1944] W. N. 222.

[5] S. 149 (3), as amended by Appeals Act 1934 s. 1 (1), see p. 575

[6] *Avelino Aramayo & Co* v. *Ogston*, [1925] 1 K. B 86, *see per* ATKIN, L.J., at 109.

[7] *Bray* v. *Lancashire JJ* (1889), 22 Q. B. D 484, see p. 29

[8] S. 149 (2) (a); *Edwards* v. *Old Bushmills Distillery Co., Ltd.* (1926), 10 Tax C. 285.

[9] S. 149 (2) (b).

[10] Administration of Justice Act, 1933, s. 7, see p. 573. A party may be ordered to pay costs, although he is assessed only in a representative capacity, as agent for a non-resident principal: *Wilcock* v. *Pinto* (1925), 10 Tax C. 415; see p. 271. The Court may, if it thinks fit, make no order as to costs: *Calder* v. *Allanson* (1935), 19 Tax C. 293.

[11] *Manchester Corporation* v. *Sugden*, see note [92].

[12] *Scottish Union, etc.* v. *Smiles* (1889), 16 R. 624.

[13] A decision of Commissioners on appeal does not create an estoppel with regard to a later year: *I. R.* v. *Sneath*, [1932] 2 K. B. 362, but the C. A. there distinguished the case of *Hoystead* v. *Commr. of Taxation*, [1926] A. C. 155, in which it had been held that an estoppel was created by a decision of the High Court of Australia, which turned upon the construction of a will. See p. 384, note [79].

[14] *Edwards* v. *Old Bushmills, etc. Co.*, above.

[15] See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, see p. 79; *P. & O. S. N. Co.* v. *Leslie* (1889), 4 Tax C. 177, *British India S. N. Co* v. *Leslie* (1900), 4 Tax C. 257, see p. 123.

[16] S. 149 (2) (a), see p. 403. In *Rose Smith & Co., Ltd.* v. *I. R.* (1933), 17 Tax C. 586, *Olley* v. *Brown* (1933), 17 Tax C. 477, and *Carrimore, Ltd.* v. *I. R.*, see p. 392, the special cases stated were held not to raise any point of law.

has been frequent controversy[17] as to whether, and to what extent, the matter is concluded by the finding of the tribunal which stated the case. A mere statement in the case that a conclusion of the Commissioners is a finding of fact does not preclude the High Court from reviewing that conclusion, if it is in truth "a determination in point of law that the facts proved or admitted provide evidence to support the Commissioners' conclusions."[18] Further, so far as the case contains findings of fact, the High Court will inquire whether there was any evidence upon which it was possible for the Commissioners to come to those findings; that is a question of law; but the Court will not decide the question of fact whether upon the evidence the findings are correct.[19] The case should state the findings of fact in clear terms, and should not merely summarise the evidence.[20]

A case stated is very liable to one of two opposite dangers; either that one party may be "stated out of Court" by the findings of fact, or that, where the findings fall short of stating one party out of Court, it may be contended that they fail to afford any ground for his contention of law. An instance of the latter kind occurred where the Commissioners had recorded a number of findings of fact with regard to deductions claimed by brewers in ascertaining the profits of their trade; it was contended on the part of the Crown that these findings did "not amount together to a finding that the sums claimed to be deducted were wholly and exclusively laid out or expended for the purposes of the appellants' trade," that is to say, to a finding in the precise words of rule 1 of the First and Second Cases of Schedule D to the Act of 1842;[21] and that therefore

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[17] The cases selected for citation here are cases in which the functions of the Court on hearing a case stated have been expressly considered; but the great majority of cases cited throughout this book have arisen by way of case stated, and afford illustrations of the exercise of those functions.

[18] Viscount SIMON, L.C., in *Bomford* v. *Osborne*, [1942] A. C. 22. See also *per* Lord PORTER, *ibid.* at 49; and *Fattorini* v. *I. R.*, [1942] A C. 643, 664. Also the observations of Lords ATKINSON and CARSON in *Great Western Ry.* v. *Bater*, [1922] 2 A. C. 12, 35; *Bell* v. *National Provincial Bank*, [1904] 1 K. B. 149, see p. 150; *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663, see p. 147; *Cooper* v. *Stubbs*, see p. 235, note [19]; *Duke of Roxburghe's Executors* v. *I. R.*, see p. 232; *Peters' Exors.* v. *I. R.*, see p. 306.

[19] *New Zealand Shipping Co.* v. *Stephens* (1906), 5 Tax C. 553, see p. 79; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, see p. 83; *American Thread Co.* v. *Joyce* (1911), 6 Tax C. 1, 163, see p. 84; *Great Western Ry. Co.* v. *Bater*, [1921] 2 K. B. 128; [1922] 2 A. C. 1, *Currie* v. *I. R.*, [1921] 2 K. B. 332; *I. R.* v. *Sassoon*, [1921] 2 K. B. 492; *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208, see p. 77, *Ducker* v. *Rees Roturbo Syndicate, Ltd.*, [1923] A. C. 133, see p. 106. The judgment of HAMILTON, J., in *American Thread Co.* v. *Joyce*, contains a complete exposition of this matter; but it is very difficult to reconcile the authorities: see *per* SCRUTTON, L. J., in *Rees Roturbo, etc., Ltd.* v. *Ducker*, [1923] 1 K. B. 517; *Beam* v. *Doncaster Collieries, Ltd.*, [1944] 2 All E. R. 279 (C. A.).

[20] *Royal Choral Soc.* v. *I. R.* [1943] 2 All E. R 101 (C. A.); *Russell* v. *I. R.*, [1944] 2 All E. R. 192 (C. A.).

[21] *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. 433, see p. 96. See now Sched. D. Cases I and II, r. 3 (a), p. 473.

the case was concluded against the appellants. Obviously, if there had been a finding in those precise words, the case would have been concluded against the Crown.[22] The House of Lords refused the Crown's contention, and Lord ATKINSON said:—

"It is for a Court of law to construe these several paragraphs as written documents, just as the Courts of law often have to construe the answers (in writing) of juries to questions put to them by the judge presiding at a trial, or as such Courts have to construe a correspondence between parties litigant to determine whether their letters in the aggregate contain a concluded contract in writing.

"In doing this the tribunal of law does not usurp the jurisdiction of the tribunal of fact, and from facts found by the latter draw a further inference of fact. It merely discharges its proper and exclusive function of construing written documents."[23]

The following passages from Lord SUMNER'S opinion[24] not only deal with that point, but define the province of a Court adjudicating upon a case stated:—[25]

"The question which arises at the outset of this case is, what facts have the Commissioners found? The jurisdiction of the High Court, and on appeals from it, is by section 59 (2) (b) of the Taxes Management Act, 1880,[26] to 'hear and determine the question or questions of law arising on a case transmitted under this Act.' This involves the construction of the language of the case stated. It must be interpreted in the light of common knowledge and by the common sense of the language used; but the findings of fact, as such, when ascertained are final. . . .

. . . "Furthermore, the judgment seems to say that the question whether a given disbursement is 'wholly or exclusively laid out for the purposes of the trade or concern' is a question of law and not of fact. With this I am not able to agree Though the answer to the question may itself be an inference from a wide area of facts, it is an answer of fact. There is no suggestion here that the Commissioners found the facts under any mistake in law, including in that term the view, conscious or unconscious, that a fact may be found which there is no relevant evidence to support. . . .

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[22] In *Younge, Crawshay and Younge, Ltd* v. *Brooke* (1912), 6 Tax C. 393, the Crown had upon very similar findings submitted to judgment.

[23] [1915] A. C. 449, 460; see also note [17].

[24] *Ibid.* at 465—467.

[25] Apart from deciding the question, above referred to, whether there was evidence upon which the finding could be reached.

[26] Now s. 149 (2) (a) of the Act of 1918, see p. 435.

Appeal in most cases the only remedy—Where there is a right of appeal, and the person assessed fails to avail himself of it, he cannot afterwards bring a petition of right to recover the money overpaid.[27] There are certain specific cases in which application can be made for subsequent adjustment or repayment; but these are limited in their scope.[28] An assessment not appealed against cannot be challenged in bankruptcy proceedings;[29] or in proceedings for the recovery of tax.[30]

The Commissioners hearing an appeal have jurisdiction to determine whether the preliminary state of facts exists which enables an assessment to be made, *e.g.*, whether the appellant is carrying on a trade in the United Kingdom so as to be chargeable under Schedule D;[31] and (unless the Commissioners decide without any evidence on which they could honestly do so) the remedy for any person aggrieved by an assessment, even if he is aggrieved by reason of his not being chargeable at all, is by appeal and case stated: the remedy is not by prohibition.[32] An action would not appear to lie for a declaration which would prevent the Commissioners from exercising their discretion upon an appeal.[33]

Prohibition lies in certain cases only—On the other hand, if Parliament in establishing a tribunal "in effect says that, if a certain state of facts exists and is shown to such tribunal before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise . . . it is not for them conclusively to decide whether that state of facts exists."[34] Accordingly, a body of Commissioners cannot by a decision which is wrong either in fact or in law, give themselves jurisdiction to assess a person, whom they have no power to assess by reason of the place[35] where he should be charged not being within their area of jurisdiction. A writ of prohibition may issue forbidding those Commissioners to assess him. Where the person assessed could in law only be assessed in respect of certain profits by a certain body of Commissioners, it was held

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[27] *Holborn Viaduct Land Co.* v *The Queen* (1887), 2 Tax C. 228, see p. 380; *Canadian Eagle Oil Co., Ltd.* v. *R.*, [1945] 2 All E. R. 499, see p. 379.

[28] See pp. 391—396. [29] *In re Calvert*, [1899] 2 Q. B. 145.

[30] *Rutherford* v. *L. A.* (1931), S. L. T. 405; 16 Tax C. 145, see p. 344.

[31] See p. 78

[32] *R.* v. *Clerkenwell Commrs., Ex p Kodak, Ltd.*, [1901] 2 K. B. 879; *R.* v. *Bloomsbury Commrs., Ex p. Hooper*, [1915] 3 K. B. 768, see p. 374; *R.* v. *Kingsland Commrs., Ex p. Pearson* (1922), 8 Tax C. 327, see p. 33, *R.* v. *Swansea Commrs., Ex p. English Crown Spelter Co., Ltd.*, [1925] 2 K. B. 650; *R.* v. *Marylebone Commrs., Ex p. Schlesinger* (1928), 13 Tax C. 746; and cf. *Anderton and Halstead, Ltd.* v. *Birrell*, [1932] 1 K. B. 271; see p. 284. Contrast note 34, below.

[33] Cf. *Smeeton* v. *Att.-Gen.*, [1920] 1 Ch. 85.

[34] *R.* v. *Special Commrs., Ex p. Cape Copper Mining Co., Ltd.* (1889), 21 Q. B. D. at 319; Lord Esher, M.R., goes on to refer to the converse case where the jurisdiction given to the tribunal includes "the jurisdiction to determine whether the preliminary state of facts exists"; see note 32. See also p. 377, note 41.

[35] See pp. 365 *sqq.*, as to place and method of assessment.

that prohibition would lie to prevent another such body from allowing or confirming an assessment made upon him in respect of those profits.[36] Even if the question is one of fact as to whether the person assessed ordinarily resided at material times within the division of certain Commissioners, the Court will, if there is conclusive evidence that he did not, prohibit those Commissioners from proceeding on the assessment. The person assessed is not bound to wait for his remedy until his assessment is confirmed.[37]

If there is any suppression of material facts in the affidavit on which the rule for a prohibition is moved, the Court will refuse the writ.[38]

Miscellaneous Applications for Repayment or Adjustment—Apart from appeal against assessment, however, there are a number of cases in which the taxpayer is entitled to apply for relief to Commissioners. Incidentally, it should be noted that a claim for any allowance or deduction, if the inspector objects to it, is to be dealt with as an appeal.[39] Where an overpayment of income tax under Schedule D or Schedule E, or of surtax, has been made owing to the assessment having been excessive by reason of the taxpayer having made a mistaken return, he may apply in writing for relief to the Commissioners of Inland Revenue within six years after the end of the year of assessment in which the assessment was made; and they are to give relief by way of repayment.[40] This right to relief is hedged about with provisos which may (it is to be feared) go far to render it nugatory: relief is not to be given if the mistake in the return was made in accordance with the practice generally prevailing at the time when the return was made;[41] and the Commissioners are to consider whether the granting of relief would result in the exclusion from charge of any part of the applicant's profits or income, and for this purpose to take into consideration his liability and the assessments made on him in respect of other years.[42] An appeal lies from the decision of the Commissioners of Inland Revenue to the Special Commissioners, on giving notice in

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[36] *R.* v. *Kensington Commrs., Ex p. Aramayo*, [1914] 3 K. B. 429; the decision was affirmed in H. L., [1916] 1 A. C. 215, but this point was not there argued; similar proceedings were taken in *R.* v. *Southampton Commrs., Ex p Singer*, [1917] 1 K. B. 269 (C. A.). The questions as to legality which arose there do not now arise.

[37] *R.* v. *Aldrington Commrs.*, [1916] W. N. 276; 85 L. J. K. B. 1753.

[38] *R.* v. *Kensington Commrs., Ex p. Polignac*, [1917] 1 K. B. 486.

[39] Act of 1918, s. 27 (5); Act of 1927, s. 41 (3); see p. 362,; a minor point of difference appears in *Brennan Trustees* v. *Scanlan*, see p 386, note [98].

[40] Act of 1923, s. 24 (1), (2), see p. 520, applied to Sched. E by s. 45 (8), and to surtax by s. 42 (3) of the Act of 1927, see pp. 548, 544, the time is extended to six years by s. 27 of the Act of 1926.

[41] S. 24 (2), proviso. See *Ross Smith & Co., Ltd.* v. *I. R.* (1933), 17 Tax C. 586.

[42] S. 24 (3).

writing to the former within twenty-one days; the latter are to decide in accordance with the principles to be followed by the former.[43] The Special Commissioners may state a case for the High Court, but only on a point of law arising in connection with the computation of profits or income;[44] upon any question of law arising in connection with liability, apart from amount, therefore, it would appear that the decision of the Special Commissioners is to be final.

Again, a person who sustains loss in any trade or profession, or in the occupation of lands for purposes of husbandry only, or of woodlands in respect of which he has elected to be charged under Schedule D, may apply to the General or the Special Commissioners for an adjustment of his liability by reference to his loss, and to his income for the year. The application must be made within one year after the year of assessment. The Commissioners on proof to their satisfaction of the loss, and of the payment of tax, are bound to give a certificate entitling the applicant to repayment.[45] A claim of this kind can be made only in the manner stated, and not by way of appeal;[46] and the Commissioners in hearing such an application have no power to state a case;[47] nor can their decision be challenged by *certiorari*.[48] A claim for relief in connection with carry-forward of loss against interest is to be heard as an appeal, with power to state a case.[48a]

Application for repayment of tax paid on interest payable on advances by bankers, stockbrokers and discount-houses[49] has to be made to the Commissioners of Inland Revenue in the prescribed form; if they decide adversely to the claimant he may apply to the Special Commissioners within twenty-one days; and they decide the matter as an appeal under Schedule D; a case may be stated.[50]

A claim for the spreading of a lump sum received in respect of copyright royalties is made in the same way; it must be made within twelve months after the year of assessment in which the whole sum would otherwise be chargeable.[51]

A similar procedure[49] applies to claims for the exemptions given by section 37 of the Act of 1918 to hospitals, public schools and almshouses. and to certain charitable bodies in

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[43] S. 24 (4), (6).

[44] S. 24 (5), proviso. *Carrimore, Ltd.* v. *I. R.*, [1944] 2 All E. R. 502 (C. A.).

[45] Act of 1918, s. 34, as amended by Act of 1923, s. 30 (3); see p. 151. And see Act of 1926, s. 33; see p. 153.

[46] *Grames* v. *Latham* (1898), 3 Tax C. 622, see p. 152. S. 34 is the successor of s. 23 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8); cf. *Furtado* v. *City of London Brewery*, p. 379.

[47] *Bruce* v. *Burton* (1901), 4 Tax C. 399.

[48] If the right question has been dealt with: *R.* v. *City of London Commrs.* (1904), 91 L. T. 94; see p. 384.

[48a] No. 2 Act of 1945, s. 22 (3), p. 781.

[49] Act of 1918, s. 36, see p. 414.

[50] Act of 1925, s. 19, see p. 526. As to appeal and case stated, see pp. 379, 385.

[51] Act of 1944, s. 24, see p. 665; and see last note.

respect of their income,[52] and by section 30 of the Act of 1921 to charities in respect of lands owned and occupied by them and of trades carried on by them.[54] On the other hand, the exemption given by section 38 to the British Museum,[55] and those given by section 39 to friendly societies, trade unions, savings banks and so forth,[56] are claimed before the Special Commissioners, except that the Museum Trustees and friendly societies may go before General Commissioners as regards Schedule A.[57] The Commissioners are bound to allow the claim on proof of the facts and to issue an order for repayment. If they wrongly refuse to do so, an order of *mandamus* will issue to compel them, whether their error is one of fact or of law;[58] and an order for costs may be made against them.[59] Such a claim is not an appeal, and the Commissioners who hear it have no power to state a case.[60]

Certain special allowances under Schedule A in respect of ecclesiastical matters, and of lands in Scotland, may be made by way of repayment.[61]

The additional allowance for maintenance, repairs, etc., made under Schedule A, No. V, rule 8, is given by repayment, but is claimed (unless the inspector accepts the claim) by way of appeal to the General Commissioners.[62]

Allowances for loss by flood and tempest under Schedules A and B are given by General Commissioners in the form of an abatement of the assessment,[63] which doubtless entitles the person in question to repayment, if the tax has already been paid. Repayment is also to be made of tax overpaid under Schedule B in respect of land occupied for husbandry only where the profits have fallen short of three times the annual value; but in this case the claim must be made within a year after the end of the year of assessment.[64] So must a claim for relief by an individual or partnership for the year 1941—42 or 1942—43 where the actual farming profits for that year have fallen short of the amount assessed for either year under

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[52] See p. 279. The allowances made under Sched. A, No. VI, are granted by the General Commissioners in making the assessment: see p. 288.

[54] The scope of s. 30 of the Act of 1921 has been extended by s. 24 of the Act of 1927, see pp. 282, 286.

[55] See p. 288.

[56] See pp. 288 *sqq.*

[57] S. 40; see p. 292. Claims under ss. 38, 39, are not affected by s. 19 of the Act of 1925,

[58] *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, see p. 586.

[59] *Ex p. Dr. Barnardo's Homes*, [1920] 1 K. B. 26.

[60] *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 193 (see p. 187), *per* ROWLATT, J., at 386.

[61] Sched. A, No. V, rr. 1, 3, 4, see pp. 458, 459. rr 5, 6, provide for the time for claiming, and the method of repayment, as at p. 396, below.

[62] Sched. A, No. V, r. 8 (5) (see p. 428), read with s. 27 (5); and see p. 34.

[63] R. 9; Sched. B, r. 3, see p. 460.

[64] Sched. B, r. 6, as amended by Act of 1923, s. 30 (3), see p. 59.

Schedule D: the claim may extend to surtax as well as to income tax proper.[65]

Where a house or building is let in different apartments or tenements severally occupied, and is therefore assessable as a whole to tax under Schedule A,[66] and any of those apartments or tenements was unoccupied during a year (or part of a year) of assessment, the Commissioners of Inland Revenue must, if application is made to them not later than twelve months after the end of the year, and on proof of the facts to their satisfaction, give such relief as they deem just, with repayment of tax if necessary.[67]

In cases of change of partnership, where an adjustment of tax requires to be made, it may be claimed before General Commissioners on the inspector's certificate; their determination is final, and is followed by repayment to any person who has overpaid.[68]

Claims for repayment may also be made in respect of tax found to have been overpaid on the discontinuance of a trade,[69] on a succession to a trade which is treated as a discontinuance in consequence of a notice given by all concerned, on an[70] account year being selected by the Commissioners of Inland Revenue for computing the profits of a trade, etc.;[71] on a person acquiring[72] a source of income chargeable under rule 1 of Case III, Case IV or Case V of Schedule D, or ceasing to possess such a source;[73] and on a person acquiring, or ceasing to possess, an office or employment, or an annuity, pension or stipend, chargeable under Schedule E;[74] also in respect of tax under Schedule D which, in consequence of war damage,[75] a tenant under a short lease cannot deduct against his landlord.

Where the business done by a non-resident person is assessed in the name of a resident on a percentage of the turnover, an appeal against the amount of percentage lies to the General or Special Commissioners; and a further reference may be required to a Board of Referees.[76]

Applications to settle proportions of tax payable or deductible as between tenant and landlord or any other person, and between the occupier of lands and any former occupier are made to the General Commissioners, whose determination is final.[77]

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[65] Act of 1941, s. 10 (6). Act of 1942, s. 28 (5); see pp 652, 666
[66] Sched. A, No. VII, r. 8 (c), see p. 42.
[67] Finance Act, 1930, s. 21, see p. 557. See notes [64]—[66], above.
[68] Sched. D, Cases I and II, r. 9; *City of London Commissioners v. Gibbs*, [1942] A. C. 402, see p. 264.
[69] Act of 1926, s. 31 (1) (a), see p. 146.
[70] Sched. D, Cases I and II, r. 11 (1), proviso, see p. 148.
[71] Act of 1926, s. 34 (2), see p. 143; as to appeal, see sub-s. 3, p. 378.
[72] Sched. D, Case III, r. 2 (1), proviso (ii); Act of 1926, s. 20, proviso (ii); see pp. 181, 223
[73] Act of 1926, s. 20, proviso (i), read with s. 31 (1) (a).
[74] Act of 1927, s. 45 (4) (iii), (5); see p. 256.
[75] Act of 1941, s. 16, see p. 46.
[76] General Rules, r. 9, see p. 272.
[77] R. 22, see p. 491.

Claims for relief in respect of share interest or loan interest by registered societies, if objected to by the inspector, are heard by the Special Commissioners by way of appeal; a case may be stated on a point of law.[78]

Accumulated Income—Where income is accumulated under a will or settlement for the benefit of a person contingently upon his attaining a specified age or marrying, a claim for what may be called a deferred exemption or abatement (calculated according to the specific directions of the enactment) may be made within six years from the end of the year in which the contingency happens,[79] by that person. No repayment can be made under this provision on account of tax paid in respect of any income which has been treated as income of the settlor by virtue of section 21 of the Act of 1936 or section 38 of the Act of 1938.[80]

The right to repayment arises, and the time runs as last stated, even if the income accumulated has to be added to capital in which the claimant has a life interest only.[81] It is a personal right, and he is entitled absolutely to the sum repaid, which is not in such a case to be treated as an accretion to capital.[82] But section 25 has been strictly construed; and it does not authorise a claim where the claimant is a person other than the person on whose age or marriage the contingency depends,[83] nor where the accumulation for the benefit of the claimant depends on a second contingency as well as on his attaining some specified age or marrying,[84] nor where the trustees have a discretion to pay the income to the infant on his attaining a specified age, and this is done.[85] The expiry of a specified period from the death of the testator is not equivalent for this purpose to the "attaining of some specified age" by the beneficiary.[86] The section is not applicable where the claimant had a vested interest before the happening of the contingency, *e.g.*, where stock is given to a child with a direction that it shall "fall due" to him "with the accruing dividends as he attains the age of twenty-one years."[87] On the other hand, the existence of a power of appointment does not prevent the application of the section; and a claim may be made under it in respect of income accumulated up to the date of the appointment.[88]

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[78] Act of 1933, s. 32 (4), see p. 570; Act of 1927, s. 41 (2), see p. 543; and see p. 154.
[79] Act of 1918, s. 25, see p. 408, *Cusden* v. *Eden* (1939), 22 Tax C. 435.
[80] Act of 1936, s. 21 (6); Act of 1938, s. 38 (6); see pp. 314, 316.
[81] *Dale* v. *Mitcalfe*, [1928] 1 K. B. 383. [82] *In re Fulford*, [1930] 1 Ch. 71.
[83] *Stoneley* v. *Ambrose* (1925), 9 Tax C. 389.
[84] *I. R.* v. *Bone*, 1927 S. C. 698; 13 Tax C. 20
[85] *Dain* v. *Miller* (1934), 18 Tax C. 478.
[86] *White* v. *Whitcher*, [1928] 1 K. B. 453.
[87] *Roberts* v. *Hanks*, [1926] W. N. 83; 10 Tax C. 351, *Edwardes-Jones* v. *Down* (1936), 20 Tax C. 279.
[88] *Chamberlain* v. *Haig-Thomas* (1933), 17 Tax C. 595.

Time for Claiming : Method of Repayment—Except where it is above indicated that a shorter time is laid down,[89] and except in the case of accumulated income last mentioned, every claim for repayment must be made within six years after the end of the year of assessment to which it relates.[90]

When any claim of relief has been allowed by the General Commissioners, they will, if the tax has already been paid by deduction or otherwise, certify the particulars to the Special Commissioners, who issue an order for repayment.[91] This procedure does not appear to be necessary where the claim has been allowed by the Special Commissioners themselves, and proof of payment is given to them.

No other means of securing Repayment—The remedies open to the ratepayer for correcting an excessive assessment by way of appeal, and for securing repayment in various special cases have now been considered; there is no other means of obtaining repayment where there has been a valid assessment, even though the amount assessed is excessive in fact or in law. Petition of right will not lie in such a case.[92] It seems probable that, if the assessment were invalid, and the Crown refused to refund the amount overpaid, a petition of right would lie. If distress is levied[93] in respect of an invalid assessment, the subject can obtain damages in an action for unlawful distress.[94]

Exceptional Depreciation Allowances—On such allowances (other than provisional)[95] the determination rests in the first instance with the Commissioners of Inland Revenue. They are to give notice of their decision to any person to whom the allowance is or would be made, and also to any other person whose liability to tax may be affected by their decision on certain incidental questions. A person to whom notice is given may appeal to the Special Commissioners, and all of them may appear on the appeal; and may demand a case.[96] There is provision for adjustments here; and also for those connected with excess profits tax, etc.[97]

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[89] See pp. 391—394.

[90] Act of 1918, s. 41 (see p. 416), as amended by Act of 1922, s. 20 (1).

[91] S. 29, see p. 410. In *R. v. Special Comrs.* (1888), 21 Q. B. D. 313, Lord ESHER, M.R., and LINDLEY, L.J., differed as to whether the certificate is conclusive; but at any rate the onus of showing that the General Commissioners have exceeded their jurisdiction is on the party which impugns the certificate. *per* LINDLEY, L.J., at 321—322.

[92] *Holborn Viaduct Land Co., Ltd.* v *The Queen* (1887), 2 Tax C. 228, see p. 390; *Canadian Eagle Oil Co., Ltd.* v. *R.*, [1945] 2 All E. R. 499. In *Hunter* v. *The King*, [1903] 1 K. B. 514; [1904] A. C. 161, such a petition was brought and decided upon (against the subject), but the Crown expressly waived the preliminary objection.

[93] See Chap. 19.

[94] *Berry* v. *Farrow*, [1914] 1 K. B. 632, see p. 399.

[95] See p. 135.

[96] No. 2 Act of 1945, s. 59, pp. 791—792; the procedure provisions in sect. 61 of the Income Tax Act, 1946, do not apply, sub-s. (9).

[97] S. 27, p. 784.

CHAPTER 19

COLLECTION AND RECOVERY

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Authority for Collection—Collection of tax is authorised, when an assessment has been signed, or signed and allowed, by Additional Commissioners, by the delivery of particulars to the collector;[1] and, when the assessment is made by the Special Commissioners,[2] by the transmission to the proper officer of a certified extract; if payment is not made to him, the Special Commissioners deliver a duplicate with a warrant to the collector for the parish in which the person charged resides.[3] In either case, if an appeal is pending, any amount which appears to the Commissioners not to be in dispute may be collected pending the determination of the appeal.[4]

The deduction (and in exceptional cases, direct collection) of tax in relation to offices and employments and pensions is dealt with in Chapter 11.

The provisions as to collection and recovery of income tax are applied to surtax "so far as they are applicable."[5]

Tax, when due—The tax (apart from what is deducted at the source) is payable in a lump sum or in instalments according to the class of persons, and the kind of profits on which it is charged.[7] The income tax is payable in one lump sum for the year when charged—

on any person under Schedule A, except as stated below;[8]

on any company or body of persons (except a railway company in England or Ireland) under any Schedule except No. I of Schedule A;

on any person under Schedule B in respect of land occupied for any other purpose than husbandry;[9]

on any person under Schedule D, Case III,[10] IV, V,[11] or VI.[12]

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[1] Act of 1942, Tenth Sched., para. 7 (1), (2), (3), see p. 671. See also pp. 369—371.
[2] See p. 371.
[3] Act of 1918, s. 154 (see p. 436), appears not to be affected by the enactment last cited.
[4] Act of 1930, s. 24 (see p. 558), applied generally by Act of 1942, Tenth Sched., para. 4 (2); the account is adjusted on the determination.
[5] Act of 1927, s. 42 (7), see p. 544. The Special Commissioners keep the collection in their own hands; and payment is made by remittance to them or to the Accountant-General of Inland Revenue: see Regulations, p. 743
[7] S. 157 (1), (2), see p. 436.
[8] Act of 1927, s. 21 (see p. 535), amending the provision last cited. See Chap. 2.
[9] See Chap. 3. [10] See Chap. 8. [11] See Chap 9 [12] See Chap. 10.

Income tax is payable in two equal instalments[13] when charged—

on any individual or firm under Schedule B in respect of lands occupied for husbandry only;[14]

on any individual or firm in respect of the profits of any trade, profession, or vocation charged under Schedule D;[15]

on any individual under Schedule A, where the annual value assessed under that Schedule is "income arising in respect of any remuneration from any office or employment of profit held" by him, or is "income from any property which is attached or forms part of the emoluments of any such office or employment";[16] and on a clergyman or minister in respect of the annual value of a dwelling-house occupied by him rent free in such circumstances that the annual value is treated as part of his earned income.[17]

A tenant-occupier who cannot recoup the whole of the Schedule A tax against his next payment of rent may, on giving notice to the collector, defer for three months payment of an amount equal to the excess of tax which he has not been able as yet to deduct.[18]

Income tax is paid in four quarterly payments by railway companies in England and Ireland.[19]

Where income tax is payable in one sum, it is payable on or before January 1 in the year of assessment; but if the assessment is not signed and allowed before January 1, then it is payable on the day after it is signed and allowed.[20]

Surtax is payable in one sum on or before January 1 next after the end of the year of assessment "as a deferred instalment of income tax"; there is a similar provision to the above as to delayed assessments.[21]

Where tax is payable in two equal instalments, the first is payable on or before January 1, and the second on or before July 1 following; but if the assessment is not signed and allowed before July 1, it is payable in one sum on the day after it is signed and allowed.[22]

Pending any appeal, only such amount of tax as is not in dispute needs to be paid.[23]

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[13] Act of 1918, s. 157 (2), p. 436.

[14] See Chap. 3.

[15] See Chaps 5 and 6.

[16] S. 157 (2), read with Act of 1927, s. 21, and with definition of "earned income," Act of 1918, s. 14 (3) (a), (b); see p. 12.

[17] Act of 1919, s. 22 (see p. 494), read with the above amendments.

[18] Act of 1928, s. 16, see p. 507. As to deduction against rent, see pp. 43, 52.

[19] S. 157 (3).

[20] S. 157 (1).

[21] Act of 1927, s. 42 (1); see Chap. 15.

[22] S. 157 (2) (a).

[23] See p. 397, note [6].

Collection from custodians of enemy property of tax relating to income affected by the Trading with the Enemy law, or due from a person affected by that law, is provided for in the Act of 1944.[24]

Infancy and Death—If an infant is assessed and makes default in payment, his parent, guardian or tutor is liable to pay.[25] If the person assessed dies before payment of tax, his executors or administrators, and in the case of an owner-occupier of lands assessed under Schedule A, his heirs or assigns also, are liable.[26] Where, because the deceased died without making a full return,[27] or for other reasons under recent provisions,[28] executors or administrators are directly assessed, the tax becomes a debt due and payable by them out of the deceased's estate.

Demand and Receipt—When the tax has become due and payable, the collector must demand it "from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require."[29] It is only under Schedule A[30] and Schedule B[31] that the tax is charged in respect of any premises:[32] in the case of tax under either of those Schedules, the demand note or the receipt must distinctly describe the property, and specify the amount of the assessment, and the rate of tax charged.[33]

The "place of a person's last abode," or "his usual or last known place of abode,"[34] does not necessarily mean a place of residence; it may be a "place of abode either from the business or domestic point of view"; but it must be "some place at which the notice [or demand] would be likely to be brought to his attention."[35] The manager of a company has not necessarily an abode at the company's office.[35]

The collector is bound to give a receipt on payment of the tax.[36]

Distress—The tax may be recovered in any parish or district in the United Kingdom, no matter in what parish or district it was charged.[37]

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[24] Fourth Sched., Part I, paras. 5, 6, 13, p. 692.
[25] S. 161 (1) (a), see p. 405. If another person is assessed in the first instance in place of the infant, the liability is on that other person, apart from any default of the infant: see p. 270.
[26] S. 161 (1) (b), (3); see p. 276.
[27] General Rule 18, see p. 277.
[28] Sched. D, Cases I and II, r. 11 (3); Act of 1926, ss. 30, proviso (i), (ii), 31 (2), 34 (4). Act of 1927, s. 45 (6), (7), see p. 277.
[29] S. 158 (1), see p. 437.
[30] See Chap. 2.
[31] See Chap. 3.
[32] Sched. A, No. VII, r. 4, see p. 462. Sched. B, r. 4, see p. 467, s. 162 (1).
[33] S. 158 (2). This is provided so as to assist tenants, etc. in deducting tax against landlords, etc.; see pp. 43, 52.
[34] See s. 220 (4), p. 449.
[35] *Berry v. Farrow*, [1914] 1 K. B. 632, see p. 256; per BANKES, J., at 639.
[36] S. 158 (3).
[37] Act of 1942, Tenth Sched., para. 8 (2), p. 672.

If a person neglects or refuses to pay the sum charged, distraint may be made.[38] There are three conditions precedent; under Schedule D or E a notice of assessment must have been duly served, whether the assessment is an original one or an additional first assessment;[39] generally the tax must have been duly demanded as above described; and again, unless the demand has been made from the person charged himself, and he has refused to pay, a reasonable time must have been allowed after the demand in order to admit of his making the payment required, for otherwise refusal or neglect cannot be inferred.[40]

The collector's warrant of appointment is sufficient; and no further authority is required for the distress unless it becomes necessary to break open any house or premises, in which case a warrant must be obtained from the General Commissioners.[41] Distress can be levied after the year of assessment has expired, to which the tax distrained for relates.[42]

Where the tax is charged under Schedule A or Schedule B, it is charged in respect of the premises;[43] any chattels found upon the premises can be seized, although they be the property of third parties, or implements of trade, and the Law of Distress Amendment Act of 1888 does not apply;[44] nor do those of 1895 and 1908. Under the other Schedules, however, the tax is charged upon the person and not on the premises, and it can therefore be recovered by distress upon the goods of the person charged only;[45] his implements of trade may, however, be seized.[46]

If lands charged under Schedule A are unoccupied, and no distress can be found thereon when the tax is payable, it may be recovered by a distress levied upon those lands at any future time, as if the occupier had been in occupation when the tax became due.[47]

The goods seized are kept for five days at the defaulter's costs; if the tax and costs are not paid within that time, the goods are to be appraised and sold by public auction for payment

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[38] Act of 1918, s. 162 (1), see p. 438. Provisions as to recovery in Scotland are contained in s. 166.

[39] *Berry* v. *Farrow*, above; see pp. 369, 371, 373.

[40] *Gibbs* v. *Stead* (1828), 8 B. & C. 528. If *R.* v. *Ford* (1825), 2 Ad. & E. 588, conflicts with that case, it is submitted that the earlier decision is the sounder.

[41] S. 162 (1), (2), (3). As to cases where the defaulter has removed, see s. 168.

[42] *Elliott* v. *Yates*, [1900] 2 Q. B. 370.

[43] S. 162 (1); see note [37] on p. 39. Special provisions for distress in the case of tithes and of certain other profits arising out of land (see Chap. 8, pp. 215, 216) are contained in s. 170, see p. 441.

[44] *MacGregor* v. *Clamp*, [1914] 1 K. B. 288.

[45] See *Shaftesbury (Earl)* v. *Russell* (1823), 1 B. & C. 666; and *per* Lush, J., [1914] 1 K. B. at 292. As to distraint where a wife living with her husband is separately assessed, see s. 171.

[46] See *Hutchens* v. *Chambers* (1758), 1 Burrows, 579; *MacGregor* v. *Clamp*, above.

[47] S. 164, see p. 438. It is submitted that this provision only applies in respect of tax which became chargeable while the land was in occupation: see "Unoccupied Lands," p. 39.

of the tax, and of the costs of taking, keeping and selling the distress; the balance is returned to the owner of the goods.[48] Where the tax due does not exceed £20, the costs are regulated by the Schedule in the Distress (Costs) Act, 1817.[49]

Recovery where Landlord is Liable, etc.—Where the landlord is liable for Schedule A tax it may be recovered from him, though he is not the person named in the assessment; but if he is not, a notice must be served on him by the inspector, and no legal proceedings can be taken, or distraining or poinding effected, for twenty-one days after the service, the notice gives him a right of appeal.[50] Further, the collector may serve a notice on the landlord for the time being, or on any person who receives rent in the right of the landlord for all or any of the land, to pay over that rent to the collector until the tax liability is satisfied; there is a £50 penalty for non-compliance.[51] Where the assessment is in respect of a house or building let in different apartments or tenements severally occupied, the collector may demand tax from any occupier up to the amount of rent that will be due at the end of the period during which payment of tax is demanded; no payment after the occupier's liability for rent has come to an end is to be demanded; if the occupier does not comply, the tax demanded may be recovered against him.[52] The exercise of these powers does not depend upon default by the landlord. In other cases where the landlord is liable under rule 8 of No. VII, tax may be levied on the occupier only where the landlord has failed to pay it.[53]

Moreover, in any case under Schedule A (including those mentioned above) tax may be recovered against the immediate lessor for the time being, up to the amount of tax on rent due under a "short lease" for the year of assessment.[54]

Priority over Private Seizure—In England the goods of any person whose tax is in arrear may not be seized (except at the suit of the landlord for rent) by virtue of any execution or other legal process, unless the arrears, up to the amount due for a whole year, are first paid; if the goods are sought to be taken by virtue of any assignment without legal process, the whole arrears of tax must be paid.[55] In Scotland such a payment will also enable a person to take the defaulter's goods by virtue

[48] S. 162 (4), (5). Provisions as to Scotland are contained in s. 166; see p. 440.
[49] 57 Geo. 3, c. 93, applied by the Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17). cf. *Coster v Headland*, [1906] A. C. 286.
[50] Act of 1941, s. 12 (1), see p. 42; First Sched., Part I, see p. 662.
[51] S. 12 (2); First Sched., Part II.
[52] S. 12 (3). First Sched., Part III.
[53] No. VII, r. 8, proviso; see p. 463.
[54] Act of 1941, ss. 13, 15 (3); see pp. 39, 654.
[55] S. 163; the section is so obscure as to be incapable of consistent construction

of any poinding, sequestration for rent, diligence or assignation; such taking is otherwise prohibited.[56]

Priority in Bankruptcy—In the distribution of the property of a bankrupt, income tax assessed on the bankrupt up to April 5 next before the date of the receiving order, and not exceeding in the whole one year's assessment, is given priority *pari passu* with certain other debts.[57] But the Crown has no other priority than that above indicated; for the provisions of the Bankruptcy Act relating to the priorities of debts are binding on the Crown,[58] and the vesting of the bankrupt's property in the trustee prevents the Crown from exercising its remedies by extent, execution or distress.[59] A similar priority extends to so much as is unpaid of the employer's liability for the period of twelve months before the relevant date in respect of tax on emoluments.[60]

Where the estate of a deceased person is insolvent, the same rules as to the priorities of debts and liabilities apply as in the case of persons adjudged bankrupt,[61] the date of death being substituted for the date of the receiving order.[62] It is immaterial whether the administration is proceeding in Court or out of Court.[63] The priority given by those provisions is not subject to the personal representative's right of retainer; but that right may be exercised against the Crown with regard to any income tax which is not within the priority.[64]

Priority in Winding-up, etc.—In winding-up,[65] and when a receiver is appointed on behalf of debenture-holders secured by a floating charge, or when possession is taken by or on behalf of those debenture-holders,[66] priority is also given to income tax

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[56] S. 167, p. 440.

[57] Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 33 (1) (a). The Commissioners of Inland Revenue may select the year for the amount of whose assessment they are to have priority: *Commercial Bank of Scotland* v. *Campbell* (1923), 10 Tax C. 585; *In re Cockell, Att.-Gen.* v. *Jackson*, [1932] W. N. 172; 16 Tax C. 721. See also Bankruptcy (Scotland) Act, 1913, s. 118, and Preferential Payments in Bankruptcy Act (Northern Ireland), 1933, s. 1.

[58] S. 151, p. 435.

[59] *Food Controller* v *Cork*, [1923] A. C. 647.

[60] Employments Regs., 1944, reg. 31 (1), p. 763.

[61] Administration of Estates Act, 1925 (15 Geo. 5, c. 23), s. 34 (1), First Sched., Part I.

[62] See notes [57], [60], above, and *Gowers* v. *Walker*, p. 402

[63] Before the passing of the Act of 1925, it had been held that, unless there was an administration proceeding in the Court of Bankruptcy, or of Chancery, s. 33 (5) of the Act of 1914 did not apply, and the Crown's common law priority was not limited by that provision: *In re Laycock*, [1919] 1 Ch. 241, following *In re Heywood*, [1897] 2 Ch. 593.

[64] *Att.-Gen.* v. *Jackson*, [1932] A. C. 365.

[65] Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 264 (1); Companies Act (N. I.), 1932, 234.

[66] Companies Act, 1929, s. 78 (1); where the debenture contains a fixed charge as well as a floating charge, the priority arises only in respect of the assets subject to the floating charge: *In re Lewis Merthyr, etc. Collieries, Ltd.*, [1928] W. N. 141, 219; Companies Act (N. I.), s. 76.

pari passu with certain other debts. In the case of a compulsory winding-up where the company had not previously commenced to be wound up voluntarily, the priority is confined to the income tax assessed "up to" April 5 next before the date of the winding-up order; and in any other case of winding-up, to the tax assessed "up to" April 5 next before the date of the commencement of the winding-up.[67] When a receiver is appointed or possession is taken, the priority is confined to tax assessed "up to" April 5 next before the date of the appointment or of taking possession.[68] In none of these cases is priority given for income tax exceeding in the whole one year's assessment.[69] The actual assessment need not have been made before April 5 in question; but it must not be for a period ending after that date.[70] The same dates regulate the priority for the company's liability as an employer in respect of tax on emoluments.[71]

In winding-up, the common law priority of the Crown no longer exists, it has no priority other than that which is above referred to, and with regard to any further debt due on account of income tax it ranks *pari passu* with other creditors.[72] Nor would it appear to have any priority in the cases dealt with under section 78 (1) of the Companies Act, 1929, other than what is given by that section.

A liquidator is bound before distributing the assets to provide for the payment of any income tax that is due.[73] If, in a voluntary winding-up, he carries on the trade, income tax charged in respect of the trade appears to have such priority as is conferred by section 264 of the Act of 1929; its actual priority is in the discretion of the Court.[74]

Commitment—If no sufficient distress can be found, the defaulter may be committed to prison under a warrant of the General Commissioners; but for this purpose ten clear days must have elapsed after the service of the demand.[75] A parent, guardian, or tutor of an infant, and an executor or administrator of a deceased person, are equally liable to commitment with a person who has been assessed on his own account.[76]

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[67] S. 264 (1) (a), read with sub-s. 7.
[68] S. 264 (1) (a), read with s. 78 (2).
[69] S. 264 (1) (a).
[70] *Gowers* v. *Walker*, [1930] 1 Ch. 262.
[71] Employments Regs 1944, s. 31 (2); see note [60].
[72] *Food Controller* v. *Cork*, [1923] A. C. 647 (above), where *In re Henley* (1878), 9 Ch. D. 469, was held not to be applicable under the existing legislation; *In re Henley* was a decision with regard to income tax, and the decision in *Food Controller* v. *Cork* consequently governs the point as to income tax, though not directly concerned with it.
[73] *In re Watchmakers' Alliance* (1905), 5 Tax C. 117. As to the assessment of a receiver or liquidator where he carries on the trade, see p. 69. And as to surtax, see *In re Alex. Drew & Co., Ltd.*, p. 340.
[74] *In re Beni Felkai Mining Co., Ltd.*, [1934] 1 Ch. 466, decided under s. 196 of the Companies Act, 1908.
[75] *Act of 1918, s. 165, see p. 439.*
[76] S. 161 (1), see p. 399.

Proceedings in High Court—Any income tax or surtax charged may be recovered with costs in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown may be sued for or recovered;[77] it is not necessary that proceedings for distress should first have been instituted and have failed: the Crown elects by what method it will proceed.[78] If the Crown is unsuccessful, it may be ordered to pay costs.[79] Proceedings may now be commenced by writ of summons;[80] but where the Crown proceeds by information, the respondent has no right to set off even in respect of income tax overpaid.[81]

A certificate of the inspector that tax has been charged and is due, together with a certificate of the collector that it has not been paid to him or (to the best of his belief) to any one else having authority to receive it, is " sufficient evidence " that the sum " mentioned in the certificate " is owing.[82] No question as to the invalidity of the assessment can be raised in proceedings for recovery.[83]

In proceedings for recovery of Schedule A tax against a landlord, where the right person is not named in the assessment, a certificate by the inspector is to be " sufficient evidence of the facts stated " therein.[84]

The Limitation Act, 1939, does not apply to any proceedings by the Crown for the recovery of taxes,[85] and the Courts (Emergency Powers) Act, 1943, does not bind the Crown; so leave under that Act is not needed.[86]

Any balance of tax assessed on a custodian of enemy property in relation to income affected by the Trading with the Enemy law, which he cannot satisfy because the income has been released and so on, is a debt due to the Crown and recoverable as such from the person to whom the income is released.[87]

Amounts under £50—Where the amount due under any assessment, or payable in respect of one instalment,[88] is less than £50 it may (in addition to any other remedy) be recovered summarily as a civil debt; proceedings are commenced in the

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[77] S. 169 (1), see p. 441. For an exhaustive discussion of the remedies open to the Crown the reader is referred to Robertson, Civil Proceedings by and against the Crown, the subject is too large for incidental treatment.

[78] S. 169 (1).

[79] *Edinburgh Life, etc.* v. *L. A.*, [1910] A. C. 143.

[80] See note [96]

[81] *Att.-Gen.* v. *Guy Motors, Ltd.*, [1928] 2 K. B. 78.

[82] Act of 1942, Tenth Sched., para. 7 (5); such evidence is obviously capable of being rebutted. The crude drafting of the paragraph may cause difficulties in practice.

[83] *Rutherford* v. *L. A.* (1931), 8 *I. T.* 145, 16 Tax C. 145; see p. 390.

[84] Act of 1941, First Sched., Part I, r. 6, see p. 663, and see p. 401.

[85] 2 & 3 Geo. 6, c. 21, s. 30 (1).

[86] 6 & 7 Geo. 6, c. 19. *Att.-Gen.* v. *Hancock*, [1940] 1 K. B. 427.

[87] Act of 1944, Fourth Sched., Part I, para. 8, p. 692.

[88] Act of 1930, s. 25 (2), see p. 558; as to payment in instalments, see p. 398.

name of the collector; and a written statement signed by or on behalf of the employer is *prima facie* evidence of wages, salaries, fees and other emoluments paid to the person charged.[89] Any sums due from one person and payable to one collector, provided they are recoverable summarily, may be recovered in the same proceeding.[90]

Summary proceedings for the recovery of an amount payable on or before January 1 or July 1[91] may be commenced within six months from that date, although there has been a demand before that date.[92] In England, the time for bringing proceedings with regard to tax under Schedule E is limited to one year.[93]

Proceedings in County Courts—Proceedings for recovery of income tax may be instituted in county courts, if the amount is within their jurisdiction, and may be removed to the High Court. Again, such proceedings, if commenced by writ in the High Court, may be remitted to a county court, with the consent of the Crown.[94]

Employers and Employees—Any amount of tax which an employer is liable to pay for any month in respect of emoluments may be recovered by the distraint, commitment, proceedings in the High Court or a county court, or summary proceedings above described; as to the last-named, the limit is raised to £100.[95] In the exceptional cases in which tax is payable direct by the employee, any of the above remedies is also available.[96]

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[89] Act of 1924, s. 30, see pp. 523, 505, see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) ss. 6, 35

[90] Act of 1930, s. 25 (1), proceedings are not to fail owing to the death of the collector who commenced them, sub-s. 3 As to evidence, see note [82], above.

[91] See p. 398

[92] *Mann* v. *Cleaver* (1930), 15 Tax C. 367, Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11

[93] No. 2 Act of 1940, s. 11 (3).

[94] Administration of Justice Act, 1933, ss. 4, 7, see p. 572. As to appeals, see Appeals Act, 1934, s. 2 (1), p. 575, and as to evidence, see note [82], above.

[95] Employments Regs., 1944, reg. 29, see pp. 762 763.

[96] Reg. 48, see p. 771, here the limit for summary proceedings remains at £50.

APPENDICES

APPENDIX 1

THE INCOME TAX ACTS[1]

NOTE.—*Repealed and obsolete enactments are omitted, and specific amendments are inserted in the appropriate context.*

THE INCOME TAX ACT, 1918
(8 & 9 GEO. 5, c. 40)

An Act to Consolidate the Enactments relating to Income Tax

[8th August, 1918]

PART I—CHARGE OF INCOME TAX

1. Where any Act enacts that income tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the schedules marked A, B, C, D, and E, contained in the First Schedule to this Act and in accordance with the Rules respectively applicable to those schedules.[2]

2. Every assessment and charge to tax shall be made for a year commencing on the sixth day of April and ending on the following fifth day of April, . . .[2a]

3. The due proportion of tax shall be charged for every fractional part of twenty shillings, but no tax shall be charged of a lower denomination than one penny.

PART II—SUPER-TAX[3]

PART III—EXEMPTION, ABATEMENT, AND RELIEF[4]

14.—(3) For the purposes of this section the expression "earned income" means—[5]

(a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or

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[1] See Finance Act, 1919, s. 28.

[2] See Act of 1926, s. 22 (1), p. 496.

[2a] Words repealed, *Employments Act, 1943, s. 5 (3).*

[3] Repealed as from April 6, 1929, Act of 1927, s. 47, and Sixth Sched., Part I.

[4] Ss. 9—13, 14 (1), (2), 15, 21, 24, 26 and 31 repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

[5] Applied and extended, Act of 1920, s. 33; see also Act of 1926, s. 14, and Act of 1932, s. 17 (3); Income Tax Act, 1945, s. 40.

compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and

(c) any income which is charged under Schedule B or Schedule D [or the rules applicable to Schedule D[5a]], and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein.

(4) In cases where the profits of a wife are deemed to be profits of the husband, any reference in this section to the individual includes either the husband or wife

16. Except as otherwise provided, any *allowance or deduction*[6] shall be given either by discharge or reduction of the assessment, or by repayment of the excess which has been paid, or by all or any of those means, as the case may require.

17. A claimant shall not be entitled to *allowance or deduction*[7] in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

18. Where an assessment has become final and conclusive for the purposes of tax for any year of assessment, that assessment shall also be final and conclusive in estimating total income from all sources for the purposes of *the Income Tax Acts*,[8] and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating such total income from all sources for such purposes unless that allowance or adjustment has been previously made on an application under the special provisions of this Act relating thereto.

19. For the purpose of *any claim for any allowance or deduction*,[9] the income arising from the ownership of lands, tenements, hereditaments, or heritages *assessable under Schedule A*[10] shall, subject to any allowance, reduction, or relief granted under this Act, be deemed to be the annual value thereof estimated in accordance with the rules applicable to Schedule A and the income arising from the occupation of lands, tenements, hereditaments and heritages *assessable under Schedule B*[10] shall, subject to any allowance, reduction or relief granted under this Act, be deemed the assessable value thereof estimated in accordance with the rules applicable to Schedule B, and where a claimant is both owner and occupier *of the last-mentioned lands, tenements, hereditaments and heritages*,[10] the amount of the annual value under Schedule A,

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[5a] These words seem obsolete since Act of 1926, s. 28, was passed.
[6] Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
[7] Words substituted, *ibid.* See Act of 1944, s. 25 (4).
[8] Words substituted, *ibid.*
[9] Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
[10] Words inserted, Act of 1926, s. 36, and Fourth Sched.

added to the amount of the assessable value under Schedule B, shall be deemed to be the income arising from those lands, tenements, hereditaments or heritages.

20. The following persons having joint interests, that is to say,—

(a) coparceners, joint tenants, or tenants in common of the profits of any property; and

(b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares; and

(c) partners carrying on a trade profession or vocation together who are entitled to the profits thereof in shares,

may claim *any allowance or deduction*[12] according to their respective shares and interests, and any such claims which are proved to the satisfaction of the commissioners to whom they are made, may be dealt with in the same manner as in the case of several interests

Provided as follows:—

(i) Profits arising from the occupation of lands shall not be separately charged if the lands are let or underlet without the lessor relinquishing the possession thereof or if the lessee is not exclusively in the possession and occupation of the lands,

(ii) The income of a partner from a partnership carrying on any trade, profession, or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates, in the partnership profits, such profits being estimated according to the several rules and directions of this Act.

22. [13].

23. Where relief has been granted for any year of assessment under any provisions of this Act providing for the reduction of an assessment on any source of income in cases where the profits of the year of assessment fall short, or in case of deprivation of or loss of profits or gains from some specific cause, the amount of the assessment as reduced shall be deemed to be the income from that source in ascertaining the total income from all sources for that year for the purpose of any claim for *allowance or deduction*.[14]

25. Where in pursuance of the provisions of any will or settlement any income arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or marrying, and the aggregate amount in any year of assessment of that income and the income from any other fund subject to the like trusts for accumulation and of the total income of that person from all sources (hereinafter referred to as "the aggregate yearly income") is of such an amount only as would entitle an individual either to total exemption from tax or to relief from tax, that person shall, on making a claim for the purpose within *six*[15] years after the end of the year of assessment in which the contingency happens, be entitled, on proof of the claim in manner prescribed by this Act, to have repaid to him on account of the tax which has been paid in respect of the income during the period of accumulation a sum equal to the aggregate amount of relief to which he would

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[12] Reference substituted. Finance Act, 1920, s. 32, and Third Sched.
[13] Repealed, Employments Act, 1943, s. 5 (3).
[14] Words substituted, see note [12].
[15] Extended to six years by Act of 1923, s. 30 (2).

have been entitled if his total income from all sources for each of the severa years of the said period had been equal to the aggregate yearly income for that year; but in calculating that sum a deduction shall be made in respect of any relief already received.

27.—(1) Any person who claims *any allowance or deduction*[16] shall, within the time limited by this Act for the delivery of lists, declarations, and statements, or within such further time as the general commissioners for the division may for any special reason allow, deliver to the assessor of the parish in which he resides, a notice of his claim, together with a declaration and statement in the prescribed form, signed by him, setting forth—

(a) all the particular sources from which his income arises, and the particular amount arising from each source;

(b) all particulars of any yearly interest or other annual payments, reserved or charged thereon, whereby his income is or may be diminished; and

(c) all particulars of sums which he has charged or may be entitled to charge on account of tax against any other person, or which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable

(2) Any surveyor may examine every such declaration and statement and take copies of or extracts from the same.

(3) The assessor shall transmit to the commissioners the notice of claim and the declaration and statement

If the surveyor does not within forty days after the transmission or within such further time as the commissioners on just cause may allow, make an objection to the claim, the commissioners may allow the claim.

(4) If it appears that any property or profits of the claimant are charged, or are liable to be charged, in some other division, the commissioners shall certify the allowance, in the prescribed form, to the Commissioners of Inland Revenue, who shall direct the appropriate relief to be given in that other division.

(5) If the surveyor objects in writing to such claim stating that he has reason to believe that the income of the claimant, or any other particulars in the declaration or statement of the claimant, are not truly or fully set forth in any specified particular, the claim shall be heard and determined by way of appeal by the general commissioners, in like manner as other appeals under this Act and with the like liability to penalties, and if the claim is allowed the commissioners shall grant and issue all necessary certificates accordingly.

28.—(1) All claims *for any allowance or deduction*[16] shall be made and proved before the general commissioners for the division in which the claimant resides, pursuant to the powers and provisions under which tax under Schedule D is ascertained and charged, and whether he be personally charged in that division or not.

(2) If the whole income of the claimant arises from an office or employment of profit, or from a pension or stipend under the jurisdiction of the commissioners of a department or office, the claim may be made to and allowed by those commissioners.

(3) If a claimant is not within the United Kingdom, an affidavit stating the particulars required by this Act, and taken before any person who has authority to administer, in the place where the claimant resides, an oath with regard to any matter relating to the public revenue of the United Kingdom, may be received by the respective commissioners.

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[16] Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

(4) If satisfactory proof is given to the commissioners that a claimant is unable to attend in person, a claim on his behalf may be made by any guardian, trustee, attorney, agent or factor acting for him.

(5) Where a person is assessable on behalf of any other person, he may make a claim as aforesaid on behalf of that other person.

29.—(1) If it is proved to the satisfaction of the general commissioners that any person whose claim for *allowance or deduction*[17] or relief has been allowed, has paid any tax, by deduction or otherwise, the general commissioners may, in the form prescribed, certify the facts proved before them to the special commissioners.

(2) The certificate of the general commissioner shall state the particulars of the different sources of income in respect of which tax has been paid, the relief to which the claimant is entitled, the amount repayable in respect thereof, and the name and place of abode of the claimant.

(3) On receipt of the certificate, the special commissioners shall issue an order for repayment.

30.—(1) A person who in making a claim for or obtaining any *allowance or deduction*,[18] or in obtaining any certificate as aforesaid—

(a) is guilty of any fraud or contrivance; or

(b) fraudulently conceals or untruly declares any income or any sum which he has charged against or deducted from, or was entitled to charge against or deduct from another person; or

(c) fraudulently makes a second claim for the same cause,

shall forfeit the sum of twenty pounds and treble the tax chargeable in respect of all the sources of his income and as if such claim had not been allowed.

(2) A person who knowingly and wilfully aids or abets any person in committing an offence under this section shall forfeit the sum of fifty pounds.[19]

Relief in respect of Insurance, Losses, and Certain Payments

32.—(1) Any person—

(a) who has made an insurance on his life or the life of his wife, or who has contracted for any deferred annuity on his own life or the life of his wife, with any insurance company[20] legally established in the United Kingdom or in any British Possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society, or, in the case of a deferred annuity, with the National Debt Commissioners;[21] and

(b) *who*[22] *is under any Act of Parliament or under the terms or conditions of his employment liable to the payment of any sum or to the deduction from his salary or stipend of any sum for the purpose of securing a deferred annuity to his widow or provision for his children after his death;*

shall, subject as hereinafter provided, be entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium paid by him for any such insurance or contract or on the amount of the sum paid by him or deducted from his salary or stipend.

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[17] Words substituted, Finance Act, 1920, s. 32, and Third Sched.

[18] Reference substituted, see note [17].

[19] Increased to £500 by s. 23 (3) of the Act of 1923.

[20] Extended, Act of of 1932, s. 20, which see.

[21] See No. 2 Act of 1940, s. 9 (1).

[22] Words to end of sub-s. 1, substituted by Finance Act, 1920, s. 26 (1).

For the purposes of this section, the expression "appropriate rate" means—

(i) *where the total income of the claimant from all sources estimated in accordance with the provisions of the Income Tax Acts does not exceed one thousand pounds, half the standard rate of tax:*

(ii) *where the total income of the claimant from all sources estimated as aforesaid exceeds one thousand pounds but does not exceed two thousand pounds, three-fourths of the standard rate of tax:*

(iii) *where the total income of the claimant from all sources estimated as aforesaid exceeds two thousand pounds, the standard rate of tax.*

(2) If any such person is charged to tax under any Schedule and has paid that tax, or has paid or has been charged with tax by deduction or otherwise, he shall, on a claim being made to the special commissioners, and on production to them of the receipt for his[23] payment, and proof of the facts to their satisfaction, be entitled to repayment of tax on the amount thereof *at the appropriate rate*.[24]

(3) No such allowance—

(a) shall be made in respect of any such amounts beyond one-sixth of the total[25] income of the person from all sources estimated in accordance with *the provisions of the Income Tax Acts*;[26]

(b) . . .;[27]

(c) shall exceed, in respect of any premium or other payment payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not), *the amount of the tax calculated at the appropriate rate on an amount equal to*[28] seven per cent. of the actual capital sum assured, and in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or of the value of any premiums agreed to be returned, or of any benefit by way of bonus, or otherwise, which is to be or may be received either before or after death, either by the person paying the premium, or by any other person, and which is not the sum actually assured;

(d) shall in *any case exceed the amount of the tax calculated at the appropriate rate on one hundred pounds*[29] in respect of any premiums or payments to which this section applies and which are payable for securing any other benefits than as last aforesaid;

(e) shall, as regards insurances or contracts for deferred annuities made after the twenty-second day of June, nineteen hundred and sixteen,

(i) be given at a greater rate of tax than *half the standard* rate of tax;[30]

(ii) be given except in respect of premiums or other payments payable on policies for securing a capital sum on death, whether in conjunction with any other benefit or not; or

(iii) be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance.

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[23] Word "annual" omitted, Finance Act, 1920, s. 32, and Third Sched.
[24] Words added, Finance Act, 1920, s. 26 (2).
[25] Word "chargeable" omitted, Finance Act, 1920, s. 32, and Third Sched.
[26] Words substituted, *ibid.* Amended by Act of 1941, s. 9, which see.
[27] Paragraph (b) omitted, *ibid.*
[28] Words inserted, Finance Act, 1920, s. 26 (3).
[29] Words substituted, s. 26 (4).
[30] Words substituted, s. 26 (5)

Provided that the two last-mentioned restrictions shall not affect premiums or payments payable on policies or contracts made in connection with any superannuation or bona fide pension scheme for the benefit of the employees of any employer or of persons engaged in any particular trade, profession, vocation or business, *or for the benefit of the wife or widow of any such employee or person or of his children or other dependants*,[31] or on any policy taken out by a teacher in a secondary school pending the establishment of a superannuation or pension scheme for those teachers;

(f) . . .[32].

(4) . . .[32]

(5) War insurance premiums shall not be taken into account in calculating the aforesaid limits of one-sixth of the total income from all sources, or of seven per cent., or of one hundred pounds.

(6) In this section the expression "war insurance premiums" means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which appears to the commissioners to whom the claim for relief is made to be attributable to those risks, or either of them.

(7) Where premiums in respect of any insurance effected with a registered friendly society are made payable for shorter periods than three months, a person who claims relief under this section must, in order to obtain relief, produce to the surveyor a certificate, signed by an officer of the society, specifying the correct amount of premiums paid during the year of assessment.

A person who wilfully gives or produces a false certificate shall forfeit the sum of fifty pounds

(8)[34] *Where a premium is paid by a wife out of her separate income in respect of an insurance on her own life or the life of her husband or a contract for any deferred annuity on her own life or the life of her husband, the same allowance of tax shall be made as if the premium were a premium paid by her husband for an insurance on his own life or for a contract for a deferred annuity on his own life, and this section shall apply accordingly.*

(9)[34] *Where the tax ultimately payable by any person after deducting the allowance under this section is greater than the amount of tax which would be payable if the total income of that person exceeded one thousand pounds or two thousand pounds, as the case may be, the allowance under this section shall be increased by a sum representing the amount by which tax at one-fourth of the standard rate on the amount of the premiums or payment in respect of which the allowance is made exceeds the amount of the tax at the standard rate on the amount by which the total income falls short of one thousand pounds or two thousand pounds, as the case may be.*

33.—(1) Where an assurance company carrying on life assurance business, or any company whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom, or any savings bank or other bank for savings, claims and proves to the satisfaction of the special commissioners that, for any year of assessment, it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits

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[31] Words inserted, s. 26 (6).

[32] Sub-s. 3, para. (f) omitted, No 2 Act of 1939, s. 9 (1), sub-s. 4 omitted, Finance Act, 1920, s. 32, and Third Sched.

[34] Sub-ss. 8 and 9 added, Finance Act, 1920, s. 26 (7).

n accordance with the rules applicable to Case I of Schedule D, the company or bank shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year:

Provided that—

(a) relief shall not be given under this section so as to make the tax paid by the company or bank less than the tax which would have been paid if the profits had been charged in accordance with the said rules; and

(b) the amount of any fines, fees, or profits arising from reversions in the case of an assurance company, and, in the case of any other company or any such bank, the amount of any income or profits derived from sources not charged to tax, shall be deducted from the amount treated as expenses of management for the year; and

(c) in calculating profits arising from reversions, the company may set off against those profits any loss arising from reversions for any previous year during which any enactment granting this relief was in operation.

(2) Notice of any claim to the special commissioners under this section, together with the particulars thereof, shall be given in writing to the surveyor within twelve months after the expiration of the year of assessment in respect of which the claim is made, and where the surveyor objects to such claim the special commissioners shall hear and determine the same in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of this Act relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

(3) A company or bank shall not be entitled to any relief under this section in respect of any expenses as to which relief may be claimed or allowed under rules 7 and 8 of No. V of Schedule A.

(4) Where an assurance company, not having its head office in the United Kingdom, is charged under Case III of Schedule D on a proportion of the income from the investments of its life assurance fund, or on a basis substituted therefor, the relief in respect of expenses of management shall be calculated by reference to a like proportion of its total expenses of management for the year, estimated according to the provisions of this Act.

(5) Where income arising from the investments of the foreign life assurance fund of an assurance company has been relieved from tax in pursuance of the provisions of this Act, a corresponding reduction shall be made in the relief granted under this section in respect of the expenses of management.

34.—(1) Where any person sustains a loss in any trade, profession, employment or vocation, carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, or in the occupation of woodlands in respect of which he has elected to be charged to tax under Schedule D, he may upon giving notice in writing to the surveyor within *one year*[34a] after the year of assessment, apply to the general commissioners or to the special commissioners, for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to this Act.

(2) The commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of tax upon the aggregate amount of income,

[34a] Extended to one year, Act of 1923, s. 30 (3).

give a certificate authorising repayment of so much of the sum paid for tax as would represent the tax upon income equal to the amount of loss, and the certificate may extend to give any exemption, abatement, or relief depending upon total income from all sources, authorised by this Act.

Upon the receipt of the certificate the Commissioners of Inland Revenue shall cause repayment to be made in conformity therewith.

(3) If any person shall be guilty of any fraud or contrivance in making any application under this section, or in obtaining any such adjustment or certificate as aforesaid, he shall forfeit the sum of fifty pounds.

(4) Where repayment has been made to a person for any year under this section, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such repayment has been obtained.

36.—(1) Where interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom is paid to the bank without deduction of tax out of profits or gains brought into charge to tax, the person by whom the interest is paid shall be entitled, on proof of the facts to the satisfaction of the special commissioners, to repayment of tax on the amount of the interest.

(2) A like repayment shall on the like proof be made in the case of interest (not being yearly interest) payable in the United Kingdom on an advance from a person who in the opinion of the Commissioners of Inland Revenue is bona fide carrying on business as a member of a stock exchange in the United Kingdom, or from any person who in the opinion of the said commissioners is bona fide carrying on the business of a discount house in the United Kingdom:

Provided that no repayment shall be made unless the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account in the statement delivered or to be delivered for the purposes of income tax by the person making the advance.

Relief to Charities, Friendly Societies, etc.

37.—(1) Exemption shall be granted—

(a) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only:[38]

Provided that any assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding the allowance of any such exemption;

(b) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of a body of persons or trust established for charitable purposes only or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only;

(c) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable

[38] See Act of 1926, s. 28, proviso.

solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes.

38. The trustees of the British Museum shall be granted exemption from tax under Schedule A in respect of the lands and tenements vested in them, and shall also be granted the like exemptions in respect of any dividends of stock vested in them, or in any other person for their use, as are granted to charitable institutions under this Act.[26]

39.—(1) An unregistered friendly society whose income does not exceed one hundred and sixty pounds shall be entitled to exemption from tax, and a registered friendly society which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D.[26]

(2) A registered trade union which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D in respect of its interest and dividends which are applicable and applied solely for the purpose of provident benefits.[26]

The expression "provident benefits" includes any payment, expressly authorised by the registered rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or as provision for the children of a deceased member.

(3) (a) Any savings bank certified under the Savings Bank Act, 1863, shall be entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners.

(b) Any savings bank, whether certified under the Savings Bank Act, 1863, or not, shall be entitled to exemption from tax under Schedules C and D in respect of the income of its funds, so far as such income is applied in the payment or credit of interest to any depositor.

Provided as follows:—

(i) *any such interest shall be chargeable under Case III of Schedule D;*[27] and

(ii) *where in the year for which exemption is claimed by the bank, the interest paid or credited to any depositor out of the income of its funds, other than interest and dividends arising from investments with the National Debt Commissioners exceeds the sum of fifteen pounds,*[28] the bank and any branch thereof shall make a return to the surveyor for the district in which the bank or branch is situate of the name and place of residence of every depositor to whom any such sum has been paid or credited, and of the amount thereof, and unless such returns are duly made, the bank shall not be entitled to any relief in respect of any such sums. Any such return shall be made on or before the first day of May in the year following that in repect of which exemption is claimed.

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[26] See Act of 1920, s. 28, proviso.
[27] Substituted, Finance Act, 1920, s. 32, and Third Sched.
[28] Words substituted, Act of 1924, s. 24.

(4) . . [39]

(5) An approved society within the meaning of Part I of the National Insurance Act, 1911, and any branch of such a society, shall be entitled to exemption in respect of the income derived from any funds or credits of the society under that Part of that Act, or any investment thereof, and the Insurance Commissioners, the Scottish Insurance Commissioners, the Irish Insurance Commissioners, and the Welsh Insurance Commissioners, shall be entitled to a similar exemption in respect of any income derived from any funds held by them, or under their control or management, under or for the purposes of that Act.

Any such exemption shall be in addition to and not in derogation of any other exemption.

(6) An insurance committee established under Part I of the National Insurance Act, 1911, shall in respect of income derived from any funds or credits of the committee under the National Insurance (Health) Acts, 1911 to 1918, or any investment thereof, and the trustees of the special fund constituted by subsection (6) of section forty-eight of the National Insurance Act, 1911, as amended by the National Health Insurance Act, 1918, shall in respect of income derived from that fund, be entitled to exemption from tax, and the National Health Insurance Joint Committee shall be entitled to a similar exemption in respect of any income derived from any funds held by that committee or under the control or management of that committee under or for the purpose of the National Insurance (Health) Acts, 1911 to 1918.

Any such exemption shall be in addition to and not in derogation of any other exemption.

40. -(1) Any claim under the last *three* preceding sections [39a] shall be made to the special commissioners in writing, in such form as may be prescribed by the Commissioners of Inland Revenue, and the special commissioners on proof of the facts to their satisfaction shall allow such claim accordingly:

Provided that any claim under section thirty-eight or any claim under subsection (1) of section thirty-nine of this Act as to tax under Schedule A may be made to the general commissioners.

(2) The special commissioners shall require every such claim to be verified by affidavit, and proof of the claim may be given by the treasurer, trustee, or any duly authorised agent, on affidavit made before a general or additional commissioner for the division in which such person resides.

(3) Where the special commissioners allow a claim they shall issue an order for repayment.

(4) A person who makes a false or fraudulent claim for exemption under the said sections in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of one hundred pounds, and if such claim is made by any person in his own behalf he shall in addition be liable to be charged in treble the tax so chargeable.

41. Save as hereinbefore provided in the case of income accumulated until the happening of a contingency, no claim for repayment of tax under this Act shall be allowed unless it is made within *six* [40] years next after the end of the year of assessment to which it relates.[41]

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[39] Repealed, Act of 1933, s. 31 (2) and Eighth Sched.

[39a] Claims under s. 37 are excluded by Act of 1925, s. 19 (4).

[40] Extended to six years, Finance Act, 1923, s. 30 (1).

[41] See Finance Act, 1919, s. 17.

PART IV—SPECIAL PROVISIONS

46.—(1) Where the Treasury have before the commencement of this Act issued or may thereafter issue any securities which they have power to issue for the purpose of raising any money or any loan, with a condition that the interest thereon shall not be liable to tax or super-tax, so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest of securities issued with such a condition shall be exempt accordingly.[42]

(2) Where securities so issued for the time being form part of the investments of the foreign life assurance fund of an assurance company, the income arising from those securities, if applied for the purposes of that fund or re-invested so as to form part of that fund, shall not be liable to tax.

(3) Where the special commissioners are satisfied that any income arising abroad from the investments of the foreign life assurance fund of an assurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities issued as aforesaid, that income shall not be liable to tax, and any tax paid thereon shall, if necessary, be repaid to the company.

(4) Where any securities have before the commencement of this Act been issued or are hereafter issued in the United States of America by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, the securities, if issued under the authority of the Treasury, shall not be liable to tax or super-tax, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

The expression "local authority" in this subsection includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purposes of the subsection by the Local Government Board.

47.—(1) The accumulated interest payable in respect of any war savings certificate issued by the Treasury through the Post Office, under which the purchaser, by virtue of an immediate payment of fifteen shillings and sixpence, becomes entitled after five years to receive the sum of one pound, shall not be liable to tax so long as the amount of the certificates held by the person who is for the time being the holder of the certificate, does not exceed the amount which an individual is for the time being authorised to hold under regulations made by the Treasury.[43]

(2) Where the currency of any war savings certificate has been extended under *any Act*,[44] the foregoing provisions of this section shall apply with respect to any interest payable in respect of the certificate for the period after the expiration of five years from the date on which it was issued up to the date on which it is repaid or redeemed as it applies to the said accumulated interest.

48.—(1) . . .

(2) The Treasury may direct that any Exchequer bonds, issued under their authority during the continuance of the present war and a period of

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[42] As to appeal, see Act of 1924, s. 27.

[43] This includes a reference to any national savings certificates issued by the Treasury through the Post Office Savings Bank Act, 1920 (10 & 11 Geo. 5, c. 12), s. 7. See Finance Act, 1922, s. 28

[44] Words substituted by Finance Act, 1919, s. 24.

six months thereafter, and any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts shall be issued, or shall be deemed to have been issued, subject to the condition that the interest on the bonds and securities shall be paid without deduction of tax, and the interest shall be so paid accordingly, but any such interest shall be chargeable under Case III of Schedule D.

(3) Where interest on any securities issued in connection with any Government loan raised for the purposes of the present war is paid without deduction of tax, any person by whom such interest is paid, and any person who receives on behalf of any other person being a registered or inscribed holder of any such security any interest so paid without deduction of tax, and any person who has acted as intermediary in the purchase of any securities on which the interest is payable without deduction of tax shall, on being so required by the Commissioners of Inland Revenue, furnish to them—

(i) the names and addresses of the persons to whom such interest has been paid or on whose behalf such interest has been received or on whose behalf such securities have been purchased;

(ii) the amount of the interest so paid or received, or the amount of the securities so purchased.

PART V—ADMINISTRATION

Special Commissioners

67.—(1) . . .

(2) In cases in which the special commissioners have authority to make, sign or allow assessments, or to hear appeals, they shall possess and exercise all the powers of the additional commissioners and general commissioners with respect to assessments, appeals, and the collection and recovery of tax.

90. (*Areas. Parishes for purposes of assessment.*)[44]

PART VI—ASSESSMENT

Provisions as to Assessment

98. (*General notices to deliver lists and statements.*)[45]—(1) The assessors . . . shall . . . cause general notices to be given, requiring all persons who, by this Act, are required to make out and deliver any list, declaration, or statement, to make out and deliver the same to the respective assessors . . .

(2) . . .

(3) The general notices . . . shall be deemed sufficient notice to all persons resident in the parish, . . .

99.—(1) The assessors shall, within the time directed by the precept of the general commissioners, give a particular notice to every person chargeable within the limits wherein they act, requiring him, within such time as shall be limited by the precept, to prepare and deliver to the assessors all such lists, declarations, and statements as are required by this Act to be delivered.

(2) A particular notice may be given either personally, or by leaving a notice at the dwelling-house, place of residence or place of business of the person chargeable, or on the premises to be charged by the assessment.

100.—(1) Every person chargeable under this Act, when required to do so by any . . .[46] particular notice given in pursuance of this Act, shall, within the period limited by such notice, prepare and deliver to the assessor,

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[44] See Act of 1920, s. 29. [45] See Act of 1942, s. 42, and Tenth Sched., para. 1.

a true and correct statement in writing as required by the Act, signed by him, containing—

(a) the annual value of all lands and tenements in his occupation, whether situate in one, or more than one, parish;

(b) the amount of the profits or gains arising to him, from each and every source chargeable according to the respective schedules, estimated for the period and according to the provisions and rules of this Act.

(2) To the said statement shall be added a declaration that such values or amounts are estimated in respect of all the sources of income mentioned in this Act, describing the same, after deducting only such sums as are allowed.

(3) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect thereof.

(4) Every person upon whom a particular notice has been served by an assessor requiring him to deliver a statement of any profits, gains, or income in respect of which he is chargeable under Schedule D or Schedule E, shall deliver a statement in the form required by the notice, whether or not he is so chargeable:

Provided that the penalty inflicted upon any person proceeded against for not complying with this provision who proves that he was not chargeable to tax, shall not exceed five pounds for any one offence.

101.—(1) Every person acting in any character on behalf of any incapacitated person or person not resident in the United Kingdom who, by reason of such incapacity or non-residence in the United Kingdom, cannot be personally charged under this Act, shall, whenever required to do so by any . . .[46] particular notice, within the like period, and in any parish in which he may be chargeable on his own account, deliver such a statement as in the last preceding section is described of the profits or gains in respect of which the tax is to be charged on him on account of that other person, together with the prescribed declaration.

(2) Where two or more such persons are liable to be charged for the same person—

(a) one statement only shall be required to be delivered which may be made by them jointly, or by any one or more of them; and

(b) notice in writing may be given by any such persons to the general commissioners for each division in which they are called upon for a statement stating in which parish or parishes they are respectively chargeable on their own account, and in which of those parishes they desire to be charged on behalf of the person for whom they act, and they shall, if any one of them be liable to be charged on his own account in that parish, be charged therein accordingly by one assessment.

102.—(1) If any person shall come into a parish in which he has not been charged to tax, the assessor, collector, or surveyor may give him notice in writing to deliver, within fourteen days from the giving of the notice—

(a) a declaration in writing, signed by him, specifying the parish and county in which he has been assessed; or

(b) in default thereof, a statement in order that he may be assessed and charged in the parish into which he has come.

(2) A person who neglects or refuses to deliver, within the time limited, any such declaration or statement, or who makes a declaration or statement

which is false or untrue in any particular, shall forfeit a sum not exceeding twenty pounds.

(3) If in any case a person who is, or who resides, in any parish has not been assessed therein, the commissioners acting for the parish may assess him, as though he had been resident there at the time of the publication of the general notices directed by this Act, unless he proves to their satisfaction that he has been duly assessed in some other parish.

103.—(1) Every person who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the United Kingdom and not an incapacitated person, shall, whenever required to do so by any general or particular notice, prepare and deliver, within the period mentioned in such notice, a list in the prescribed form, signed by him, containing—

(a) a true and correct statement of all such money, value, profits or gains;

(b) the name and address of every person to whom the same shall belong;

(c) a declaration whether every such person is of full age, or a married woman living with her husband, or a married woman whose husband is not accountable for the payment of any tax charged on her, or is resident in the United Kingdom or is an incapacitated person.

(2) If any person above described is acting jointly with any other person, he shall, in like manner, deliver a list of the names and addresses of all persons joined with him at the time of delivery of the list mentioned in the last preceding subsection.

(3) (a) A trustee who has authorised the receipt of profits arising from trust property by the person entitled thereto, or by the agent of such person, if that person or agent shall actually receive the same under that authority; or

(b) An agent or receiver of any person resident in the United Kingdom, other than an incapacitated person,

shall not, if he returns a list, as required by this section, of the name, address and profits of that person, be required to do any other act for the purpose of the assessment of that person, unless the commissioners acting in the execution of this Act in respect of the assessment to be made on that person, require the testimony of the trustee, agent, or receiver, as the case may be, in pursuance of the provisions of this Act.

104. Every person, when required to do so by a general or particular notice under this Act, shall, within the time limited thereby, prepare and deliver to the assessor a list, in writing, containing to the best of his belief—

(a) the name of every lodger or inmate resident in his dwelling-house; and

(b) the name and ordinary place of residence of any such lodger or inmate who has any ordinary place of residence elsewhere at which he can be assessed and who desires to be assessed at such ordinary place of residence.

105.—(1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return containing—

(a) the names and places of residence of all persons employed by him; and

(b) the payments made to those persons in respect of that employment, *except persons who are not employed in any other employment and whose remuneration in the employment for the year does not exceed*

one hundred and ten pounds or, if the employment is for less than the year, a proportionately reduced amount,[47]

and the provisions of this Act with respect to the failure to deliver lists, declarations, and statements, in accordance with a general or particular notice, shall apply to any such return:

Provided that an employer shall not be liable to any penalty for omitting from any such return the name or place of residence of any person employed by him and not employed in any other employment, if it appears to the general commissioners, on inquiry before them, that such person is entitled to total exemption from tax.

(2) Where the employer is a body of persons, the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

(3) . . [47a]

(4) Where an employer is a body corporate (including a company), that body corporate shall be liable to a penalty for failure to deliver a return in pursuance of this section, as well as the secretary or other officer performing the duties of secretary of the body corporate.

106.—(1) The chamberlain or other officer acting as treasurer, auditor or receiver for the time being of any body of persons chargeable to tax, shall be answerable for doing all such acts as are required to be done under this Act, for the purpose of the assessment of such body and for payment of the tax, and for the purpose of the assessment of the officers and persons in the employment of such body:

Provided that, in the case of a company, the person so answerable shall be the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

(2) Every such officer as aforesaid may from time to time retain out of any money coming into his hands, on behalf of the body, so much thereof as is sufficient to pay the tax charged upon the body, and shall be indemnified for all such payments made in pursuance of this Act.

107.—(1) A person who neglects or refuses to deliver, within the time limited in any general or particular notice, or wilfully makes delay in delivering a true and correct list, declaration, or statement, which he is required under this Act to deliver, shall—

(a) if proceeded against before the general commissioners, forfeit a sum not exceeding twenty pounds and treble the tax which he ought to be charged under this Act, and such penalty shall be recovered in the same way as any other penalty under this Act, and the increased tax shall be added to the assessment; or

(b) if proceeded against by action or information in any court, forfeit a sum of fifty pounds.[48]

(2) The commissioners shall also proceed to assess or cause to be assessed every such person who makes default as aforesaid.

(3) If any person who is required to deliver a list, declaration, or statement on behalf of any other person, delivers an imperfect list, declaration, or

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[47] Words substituted, Act of 1941, s. 22.

[47a] Sub-s. 3 repealed, Employments Act, 1943, s. 5 (3).

[48] Increased to £20 and treble the tax with which the offender ought to be charged under the Act of 1918, by s. 23 (2) of the Act of 1923. See also No. 2 Act of 1945, s. 28

statement, and declares himself unable, within the time limited, to deliver a more perfect list, declaration, or statement, and states the reasons for his inability, he shall not, if the said commissioners are satisfied with his explanation and grant further time for delivery, be liable to the penalty prescribed by this section, if he delivers, within the further time granted, as perfect a list, declaration, or statement as the nature of the case permits.

(4) Provided as follows:—

(a) If it appears to the commissioners, on enquiry before them, that a person, to or on whom the assessor has not delivered or served a particular notice, is entitled to exemption from tax, that person shall not be liable to any penalty for not delivering a statement:

(b) A person chargeable in any department of office by commissioners specially appointed to act for that department, in respect of profits arising from an office, pension, or stipend, shall not be liable to any penalty for not delivering a statement thereof unless the assessor for that department has required a statement from him by a particular notice.

108.—(1) The assessor shall make out and deliver to the surveyor of the district a list containing—

(a) the names of all persons to or on whom notices ought to the best of his knowledge to be delivered or served in pursuance of this Act;

(b) the names of all persons who are to the best of his knowledge chargeable within the limits of the assessor . . .;[60]

(2) . . .[60]

(3) If any assessor . . . omits or neglects to return to the surveyor the name of any person whose name ought to be included in any such list, he shall forfeit a sum not exceeding twenty pounds.

109.—The surveyor may at any time cause a notice to be delivered or served—

(a) to or on any person to whom the assessor has neglected to give a notice which ought to have been given; and

(b) to or on any person coming to reside in any parish after the expiration of the general notices prescribed by this Act.

110.—(1) The assessments under Schedules A and B for any parish shall contain—

(a) the full and just annual value of all lands, tenements, hereditaments and heritages estimated in each particular case as directed by this Act; and

(b) the names of the occupiers and proprietors thereof.

(2) Such assessments, together with all statements which have been delivered to the assessors, both of annual value and of any deductions claimed to be made therefrom, shall be progressively numbered.

111. (*Instruction and assistance of assessors.*)

112. If *the surveyor or*[61] the assessor does not receive a statement from a person liable to be charged to tax, *the assessor*[61] shall to the best of his information and judgment—

(a) make an assessment upon that person of the amount at which he ought to be charged under Schedules A, B, and E; and

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[60] Paras. (a) and (b) substituted, and paras. (c) and (d) omitted, Act of 1927, s. 46 and Fifth Sched., Part III.

[60] See Act of 1942, Tenth Sched., para. 2.

[61] Words inserted and substituted, Act of 1927, s. 46, and Fifth Sched., Part III.

(b) estimate the amount at which that person ought to be charged under Schedule D, and make a return to the commissioners of the name and address of that person and of any other particulars which the commissioners may require.

113. (*Delivery and examination of assessments and statements.*)

114. (*Inspection of parish books.*)

115. (*Production of rate books to general commissioners.*)

116.—(1) If—

(a) a person chargeable does not, after due notice under this Act, deliver a statement of the annual value of property in his occupation, estimated according to the provisions and rules applicable to the case; or

(b) the commissioners are not satisfied with any statement which has been delivered,

the assessor or surveyor, as the case may be, on obtaining a signed order of the general commissioners to that effect, and after two days' notice to the occupier, may, with the assistance of a person or persons of skill named in the order, at all seasonable times in the daytime, view and examine any lands or property chargeable, in order to make a survey thereof, or otherwise to ascertain the annual value at or by reference to which the same ought to be charged, and may enter upon any lands or grounds whether enclosed or not, and measure and survey the same, if he cannot otherwise ascertain the annual value thereof.

117. (*Powers of assessors for public departments.*)

118.—(1) The clerks to the respective general commissioners shall, with all convenient speed, abstract the particulars contained in the lists and statements delivered to the commissioners, into books provided for the purpose, and according to the forms prescribed by the Commissioners of Inland Revenue.

(2) The abstracts shall contain the names of the persons delivering such lists and statements, and the several amounts of profits returned by them respectively, and shall be delivered to the commissioners.

(3) Every surveyor who has made the prescribed declaration shall be allowed free access to the books of abstract at all seasonable times and may take copies of or make extracts from the same.[52]

119.—(1) The surveyor may examine all statements and assessments made for any parish for any year of assessment, whether the said assessments have been signed and allowed or not.

(2) Every person having the custody of any statement shall, on request of the surveyor, deliver it into his custody, taking his receipt for the same; and every person having the custody of any assessment shall, on the like request, produce the same to the surveyor, who may take charge of it until he has taken such copies or extracts as may be necessary.

120.—(1) The general commissioners shall take into consideration the assessments under Schedules A, B, and E, delivered by the assessors, after they have been examined by the surveyor, and if he has not objected to the assessments and the commissioners are satisfied that they have been made truly and without fraud, and so as to charge the persons, properties, and

[52] Applies only under Sched. A, Act of 1944, s. 36 (8).

profits to which they relate with the full tax which ought to be charged, they shall sign and allow them.

(2) If the surveyor objects to, and applies for the revision of, any such assessments, and suggests, in writing, to the general commissioners any error, mistake, omission, or fraud in making the same, the commissioners shall, to the best of their judgment, rectify the assessment, so that the proper tax may be fully charged according to the intent and meaning of this Act.

121.—(1) Statements of profits or gains under Schedule D shall, unless an assessment thereon is required to be made by the special commissioners, be laid before the additional commissioners.

(2) Within a reasonable time after the surveyor has examined the statements, the additional commissioners shall appoint meetings for the consideration of all such statements as are then, or from time to time, delivered to them.

(3) If—

(a) the additional commissioners are satisfied that a statement has been bona fide made in accordance with this Act, and so as to enable them to assess the person with the full tax which ought to be charged; and

(b) no information is given to the additional commissioners as to the insufficiency of the statement, and the surveyor makes no objection thereto, which he is hereby authorised to make for sufficient cause,

the additional commissioners shall direct an assessment to be made in accordance with the statement:

Provided as follows:—

(i) If the surveyor then declares himself dissatisfied with the determination of the said additional commissioners, as not being in accordance with the true intent and meaning of this Act, he may require them to state and sign a case, giving their determination thereon, for the opinion of the general commissioners for the division, which they shall sign and state accordingly:

(ii) The case so stated and signed shall be delivered to the surveyor, who shall transmit it to the general commissioners. The general commissioners shall, with all convenient speed, return the case with their opinion subscribed thereon, and the assessment shall be altered or confirmed accordingly.

(4) If—

(a) a person makes default in the delivery of a statement in respect of any tax under Schedule D with which he has not been otherwise charged; or

(b) the additional commissioners are not satisfied with a statement which has been delivered, or have received any information as to its insufficiency; or

(c) the surveyor makes an objection in writing to a statement as aforesaid, setting forth the cause thereof,

the additional commissioners shall make an assessment on the person concerned in such sum as, according to the best of their judgment, ought to be charged on him.

(5) The additional commissioners may refer any statement to the general commissioners, without making any assessment thereon, by delivering to them a case in writing setting forth the matters in question, either of law or of fact, relating thereto, and the general commissioners shall proceed to enquire into the merits of such statement, in the like manner as they are

authorised to do in the case of an appeal against an assessment, and thereupon an assessment shall be made in accordance with the determination of the general commissioners.

(6) The surveyor may, at all seasonable times, examine any assessment made by the additional commissioners before it is delivered to the general commissioners, and, if he discovers any error requiring amendment, he shall certify the same to the commissioners by whom the assessment was made, who, on sufficient cause shown to them, shall make any amendment which they consider is required.

(7) If the surveyor makes an objection in writing to the additional commissioners, which he is hereby authorised to do upon sufficient cause, as to the amount of an assessment made by them, they shall certify his objection, together with their reasons for making the assessment, and any information they have obtained respecting it, to the general commissioners.

(8) The surveyor shall give notice of his objection and particulars thereof to the person assessed, in order that he may appear before the general commissioners in support of the assessment.

122.—(1) The additional commissioners shall, as their assessments are from time to time completed, cause to be *embodied*[51] in books provided for the purpose, certificates of assessments, in the form prescribed by the Commissioners of Inland Revenue, distinguishing the parish for which each assessment is made, and containing—

(a) the names, surnames, and addresses of the persons assessed, progressively distinguished by numbers or letters; and

(b) the sums which ought to be paid by them respectively.

(2) The assessment shall be signed by the additional commissioners. . . .[52]

123.—(1) A person chargeable under Schedule D, who does not claim the exemption granted in a case where the total income from all sources does not exceed one hundred and thirty pounds a year, may require that all proceedings in order to an assessment upon him under that schedule shall be taken before the special commissioners, instead of before the additional or the general commissioners, and in that case shall deliver a notice of his request *together with the statement of his profits or gains to the surveyor of the district.*[53] The notice and statement shall be delivered within the time limited by the general notice under this Act for delivery of lists and statements.

(2) The surveyor shall, after examining the statement, make an assessment to the best of his judgment, and deliver a certificate thereof, together with the statement, to the special commissioners, who, after examination thereof, shall sign and allow such an assessment as appears to them just and proper, which shall be subject to appeal as hereinafter provided.

(3) The special commissioners shall notify the amount of the charge to the person charged, who shall pay the tax to the proper officer.

124. Assessments in respect of the annual value or profits or gains arising from a railway shall be made by the special commissioners, who shall notify their assessment to the secretary or other officer of the company upon which it is made, and the amount of the assessment shall be paid, collected, and levied in like manner as any other assessment made by the special commissioners.

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[51] Amended, Act of 1944, s. 26 (3).

[52] See Act of 1942, Tenth Sched., parts. 4, 6 (2).

[53] Words substituted, Act of 1927, s. 46, and Fifth Sched., Part III.

Additional Assessments

125.—(1) If the surveyor discovers—

that any properties or profits chargeable to tax have been omitted from the first assessments; or

that a person chargeable has not delivered any statement, or has not delivered a full and proper statement, or has not been assessed to tax, or has been undercharged in the first assessments; or

that a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement, or relief not authorised by this Act,

then and in every such case—

(i) where the tax is chargeable under Schedule A, B, or E:—

(a) If the first assessments have not been signed and allowed, the surveyor shall amend the assessment and assess the person liable to the full amount, and at the full rate of tax, at which he ought to be charged;

(b) If the first assessments have been signed and allowed, the surveyor shall certify the particulars to the general commissioners,[84] who shall sign and allow an additional first assessment in accordance therewith:

Provided that any such additional first assessment shall be subject to appeal and other proceedings as in the case of a first assessment:

(ii) where the tax is chargeable under Schedule D, the additional commissioners shall make an assessment, on the person chargeable, in an additional first assessment, in such a sum as, according to their judgment, ought to be charged, and any such assessment shall be subject to objection by the surveyor, and to appeal.

(2) An assessment may be amended, or an additional first assessment may be made at any time not later than *six*[85] years after the expiration of the year of assessment.

(3) Any assessments not made at the time when the first assessments are signed and allowed shall, as soon as they are made, be added to the first assessments, and to the respective duplicates thereof, by means of separate forms of assessment and duplicate.

Surcharges

126.—(1) If the surveyor discovers that a person liable to tax has not been charged in respect thereof in any first or additional first assessment, he may, at any time within *six*[85] years after the expiration of the year of assessment for which that person ought to have been charged, surcharge, to the best of his judgment, the person liable, to the amount which ought to have been charged for that year.

(2) In every such case the surveyor shall certify the particulars of the omission, and of the surcharge, to the general commissioners, and shall give to any person so surcharged notice of the surcharge and particulars thereof.

(3) The general commissioners, upon the delivery of the certificate and upon oath being made, by the surveyor or some other credible witness, that service of the notice of surcharge has been duly made upon the person surcharged, shall sign and allow the certificate, as hereinafter prescribed, subject to appeal.

(4) Any such certificate of surcharge shall not be signed or allowed, nor

[84] Now to the Additional Commissioners, Act of 1942, Tenth Sched., para. 3.
[85] Extended to six years by Finance Act, 1923, s. 29 (1).

shall any appeal against the surcharge be heard, by the general commissioners, before the expiration of ten days after service of the notice of surcharge.

(5) The certificate of the surveyor, together with the oath of service of the notice of surcharge, shall be sufficient proof of the contents thereof, unless, on the production of the notice to the general commissioners, the contrary is shown by the person surcharged, and no other proof than as aforesaid of the contents of any such notice shall be required before the certificate is signed and allowed, or on appeal therefrom, or in any matter relating thereto.

(6) The oath of service of notice of surcharge shall be to the effect that a notice was duly served, upon each person mentioned in the certificate, containing the particulars as set forth therein, on the day or days mentioned in the certificate.

127.—(1) A person to whom such a notice of surcharge has been given may, whether he has previously delivered a statement or not, within ten days from the service of the notice—

(a) deliver to the surveyor a true and perfect return, containing all the particulars required by this Act; or

(b) give notice in writing to the surveyor that he abides by the statement previously delivered by him.

(2) To such return or notice shall be annexed a declaration signed by the person to whom the notice of surcharge was given, and further signed and attested by one or more credible witnesses, and the declaration shall state, as the case may require—

(a) the grounds and cause of the neglect to deliver a statement; or

(b) the grounds and cause of every omission made, or stated in the notice of surcharge to have been made, in any statement delivered by him; or

(c) the grounds and cause of every claim of exemption, abatement, relief, allowance, or deduction made in any such statement; and

(d) that the statement by which he abides, or the return to which the declaration is annexed, is a true and perfect return of all particulars required by this Act, to the best of the judgment and belief of the declarant; and

(e) that any neglect, omission, or claim was not made with intent to defraud the revenue.

(3) If a person, in any such declaration as aforesaid, wilfully and fraudulently declares anything which is false, he shall be guilty of a misdemeanour, and shall be liable to imprisonment not exceeding six months, and to a fine not exceeding treble the amount of tax for which he has been surcharged, as the court shall order

The indictment for any such misdemeanour shall be laid in the county in which the declaration was exhibited to the general commissioners.

(4) If the surveyor is satisfied with the statement or return and the declaration, he may certify his satisfaction therewith to the general commissioners, and the commissioners shall thereupon cause the person surcharged to be charged on the amount set forth in the statement or return, in single rate of tax.

128.—(1) The surveyor may object to any such statement, return, or declaration, and in that case—

(a) he shall serve notice of objection on the person surcharged; and

(b) he shall certify the statement or return and the declaration together with the cause of his objection, to the general commissioners.

(2) The general commissioners shall thereupon cause a charge to be made,

in accordance with the said certificate of objection, and no abatement shall be made therefrom, except upon an appeal by the person surcharged.

129.—(1) If, within ten days after the service of the notice of surcharge, the person surcharged delivers a return and declaration to which the surveyor objects, that delivery shall operate as a notice of appeal to the general commissioners against the surcharge.

(2) If the person surcharged does not, before the expiration of ten days after service of the notice of surcharge, deliver a return or declaration, the general commissioners may, if he or his agent appears upon the day appointed for hearing appeals against surcharges and delivers a return and declaration as is herein required, hear and determine the matter, although the person surcharged has not given notice of his intention to appeal.

(3) If, upon the said day, neither the person surcharged nor his agent appears, or in default of the delivery of a return or declaration as aforesaid, the general commissioners shall confirm the certificate of surcharge.

(4) If—

(a) the commissioners do not meet before the time limited for the hearing of appeals from the surcharges of the surveyor; or

(b) the surveyor has not had notice of a meeting of the commissioners,

the commissioners shall, at their next subsequent meeting, sign and allow the certificates, and afterwards hear and determine all appeals therefrom.

(5) No surcharge shall be allowed and signed unless the certificate thereof has been delivered to the general commissioners within six[56] years after the expiration of the year of assessment in respect of which the surcharge is made.

(6) In default of a meeting of the commissioners, the delivery of a certificate of surcharge by the surveyor to their clerk shall be a sufficient delivery.

130.—(1) A certificate of surcharge, as aforesaid, shall be sufficient authority to the general commissioners for causing supplementary assessments to be made from time to time.

(2) Supplementary assessments shall include—

(a) all surcharges according to the certificates of surcharge, amended in cases requiring amendment, according to the determination of the commissioners;

(b) all treble tax, or any part thereof, assessed over and above the rate or rates of tax prescribed; and

(c) all penalties imposed by the commissioners for offences under this Act.

131. . . .[56a]

Provisions against Fraudulent Practices

132.—(1) Where a person who ought to be charged with tax, as directed by this Act, is not duly assessed and charged by reason that he has—

(a) fraudulently changed his place of residence or fraudulently converted, or fraudulently released, assigned, or conveyed any of his property; or

(b) made and delivered any statement or schedule which is false or fraudulent; or

(c) fraudulently converted any of his property, which was chargeable, by altering any security relating hereto or by fraudulently rendering

[56] Extended to six years by Act of 1923, s. 29 (1).
[56a] Repealed, 6 & 7 Geo. 6, c. 45, s. 5 (3).

it temporarily unproductive, in order not to be charged for the same or any part thereof; or

—(d) been guilty of any falsehood, wilful neglect, fraud, covin, art or contrivance whatsoever,

such person shall, on proof thereof to the general commissioners for the division in which he has been charged, or, if he has not been charged, then for any division in which he is chargeable,[87] be assessed and charged treble the amount of the charge which ought to have been made upon him:

Provided that, if any charge has been made, but that charge is less than the charge which ought to have been made, such person shall be assessed and charged, over and above the former charge, treble the amount of the difference between the charge which was made and the charge which ought to have been made, such amount to be added to the assessment.

(2) A person who knowingly and wilfully aids, abets, assists, incites or induces another person to make or deliver a false or fraudulent account, statement, or declaration, of or concerning any profits or gains chargeable, or the yearly rent or value of any lands, tenements, hereditaments or heritages, or any matters affecting any such rent or value, shall for every such offence forfeit the sum of five hundred pounds.[88]

PART VII—APPEALS

133.—(1) (a) Save where expressly authorised by this Act, the general commissioners shall not alter any assessment before the time for hearing and determining appeals, and then only in cases of assessments appealed against, and in accordance with their determination.

(b) If the clerk to the commissioners or any other person makes, causes, or allows to be made, in any assessment, any unauthorised alteration, he shall incur a penalty of fifty pounds.

(2) An appeal, once determined by the commissioners, shall be final, and neither the determination of the commissioners, nor the assessment made thereon, shall be altered, except by order of the court when a case has been required as provided by this Act.

(3) Where an objection has been made by the surveyor to an assessment upon any person, and that objection has been dealt with and determined on appeal, the surveyor shall not, thereafter, make any further charge for the same year, upon that person, in respect of the same matter, property, or profits included in the assessment to which the objection, so determined, was made.

134. (*Notices of assessments and time for hearing appeals.*)[89]

135. Notice of appeal meetings to be held by the general commissioners shall also be given to the surveyor by the clerk to the commissioners.

136.—(1) A person aggrieved by any assessment upon him, made by the additional commissioners, or by the assessor for any parish, or by a surveyor, in any first or additional first assessment, or by any objection by the surveyor to an assessment made by the additional commissioners, shall be entitled to appeal to the general commissioners, on giving notice in writing to the surveyor, within twenty-one days after the date of the notice of such assessment or objection.

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[87] See Act of 1927, s. 44 (4).
[88] Increased to £500 by s. 23 (3) of the Act of 1923.
[89] See Act of 1942, Tenth Sched., para 6 (1).

(2) Any owner or other person in receipt of the rent of any lands, although not the occupier thereof, who is aggrieved by the amount of the annual value of the lands under Schedule A shall have the same right of appeal to the general commissioners as if the assessment were made upon himself.

(3) If it be shown to the satisfaction of the general commissioners that owing to absence, sickness or other reasonable cause, any person has been prevented from appealing in due time, or from attending at the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of his appeal for such reasonable time as they think necessary, or may admit the appeal to be made by any agent, clerk or servant on his behalf.

(4) (a) On the application of any person who has been assessed, and who has removed from the division in which the assessment was made, without having appealed in that division, the Commissioners of Inland Revenue may, if they think fit, authorise the commissioners of the division to which that person has removed to hear and determine his appeal against the assessment, and those commissioners shall proceed accordingly.

(b) Any sum from which the appellant may not be relieved on such appeal shall be recovered and levied as if the appeal had been heard and determined by the commissioners of the division in which the assessment was made.

137.—(1) The general commissioners shall cause notice of the day for hearing appeals to be given to every appellant, and shall meet together for the hearing of appeals from time to time, with or without adjournment, until all appeals have been determined.

(2) The surveyor and the assessor may attend every appeal, and shall be entitled—

(a) to be present during all the time of the hearing, and at the determination of the appeal; and

(b) to produce any lawful evidence in support of the assessment or surcharge; and

(c) to give reasons in support of the assessment or surcharge.

(3) (a) Upon any appeal, the general commissioners *shall*[60] permit any barrister or solicitor to plead before them on behalf of the appellant or officers, either viva voce or in writing, *and shall*[60] hear any accountant.

(b) . . .[61]

(c) In this subsection " accountant " means a person who has been admitted a member of an incorporated society of accountants.

(4) If, on an appeal, it appears to the majority of the commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is overcharged by any assessment or surcharge, the commissioners shall abate or reduce the assessment or surcharge accordingly, but otherwise every such assessment or surcharge shall stand good.

(5) If, on any appeal, it appears to the commissioners that the person assessed or surcharged ought to be charged in an amount exceeding the amount claimed in the assessment or surcharge they shall charge him with the excess.

(6) (a) Appeals against surcharges shall be heard and determined in like manner as appeals against first assessments.

(b) If a surcharge is allowed on appeal by the general commissioners, in whole or in part, the assessment shall be made upon the amount of the surcharge allowed in treble the rate of tax prescribed.

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[60] Words substituted, Act of 1923, s. 25.

[61] Para. (b) repealed, Act of 1923, s. 39 (4) and Sched.

Provided that, if the commissioners are of opinion—

(i) that the assessment might have been amended by the surveyor by means of the original statement of the appellant;

(ii) that the alleged default, neglect, or omission, or the claim of exemption, abatement, relief, allowance, or deduction was not wilfully made with intent to defraud the revenue;

(iii) that the appellant was prevented from making an amended return in due time by absence, sickness, or other sufficient cause;

(iv) that there was reasonable cause of doubt or controversy, on the part of the appellant, on the subject-matter of appeal;

the commissioners may remit the treble rate of tax, in whole or in part, and may charge at the single rate of tax only.

138.—(1) If on appeal against an assessment under Schedule A or Schedule B any dispute arises as to the annual value of any lands, tenements, hereditaments, or heritages, the general commissioners may, if they consider it necessary, and shall, if required by the appellant, direct the appellant to cause a valuation to be made by a person of skill named by them, and may require the same to be verified on the oath of such person, and the annual value shall be determined in accordance with that valuation.

(2) If the appellant does not proceed, with effect, to cause such valuation to be made, the commissioners shall determine the annual value according to the best of their judgment.

(3) The costs and charges of any such valuation shall abide the final determination of the commissioners, and, if the value so found exceeds the value alleged by the appellant, the commissioners may order him to pay the costs and charges of the valuation, but if they are of opinion that such costs and charges have not been incurred through any default of the appellant, they shall issue an order for the payment of the said costs and charges by the Commissioners of Inland Revenue.

139.—(1) If the general commissioners have received notice of appeal against an assessment made by the additional commissioners, or see cause to allow the objection of the surveyor to any such assessment, they shall issue a precept to the appellant ordering him to deliver to them, within the time limited by the precept, a schedule containing such particulars, for their information, as they may demand under the authority of this Act respecting—

(a) the property of the appellant; or

(b) the trade, profession, employment or vocation carried on or exercised by him; or

(c) the amount of his profits or gains distinguishing the particular amounts derived from each separate source; or

(d) any deductions made in arriving at his profits or gains,

which particulars the said general commissioners are hereby empowered and required to demand at their discretion whenever the same shall appear to them necessary for the purposes mentioned in this Act.[62]

(2) The general commissioners may issue further precepts whenever they consider it necessary for the purposes aforesaid, until complete particulars have been furnished to their satisfaction.

(3) A person to whom a precept is issued shall deliver the schedule required, within the time limited, and in default thereof, shall forfeit a sum not exceeding twenty pounds and treble the tax at which he ought to be charged.

(4) Any surveyor may, at all reasonable times, inspect and take copies of or extracts from any schedule.

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[62] See Act of 1942, s. 35 (2)

140.—(1) A person who has delivered a statement or schedule and discovers any omission or wrong statement therein, may deliver an additional statement or schedule rectifying the same, and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement.

(2) A person who has not delivered a statement or schedule, within the time limited, may deliver it at any time before proceedings for recovery of a penalty, incurred in respect of such non-delivery, have been commenced, and thereafter no such proceedings shall be taken.

(3) (a) If proceedings for recovery of any such penalty have been commenced before the general commissioners, they may, on proof to their satisfaction that no fraud or evasion was intended, stay the proceedings, either on payment of the costs then incurred, or without any such payment.

(b) If proceedings have been commenced in any court, the general commissioners may certify that in their judgment no fraud or evasion was intended, and the court may, on summary application, stay the proceedings, on such terms as to the court may seem fit.

(4) If a person has delivered an imperfect statement or schedule, and satisfies the general commissioners that there is a sufficient reason why a perfect statement or schedule cannot be delivered within due time, the commissioners shall extend the time for delivery as from time to time they think fit. During any such extension of time, a person who has delivered as perfect a statement or schedule as from the nature of the case he was able to deliver, shall not be liable to any penalty for not having delivered a statement or schedule within the time limited.

141.—(1) The surveyor may, within a reasonable time to be allowed by the commissioners to whom an appeal is made after examination by him of any schedule, object to such schedule or any part thereof, and in that case shall state, in writing, the cause of his objection, according to the best of his knowledge or information.

(2) In every such case, he shall give notice in writing of his objection, to the person to be charged in order that he may, if he thinks fit, appeal against the same. The notice shall be under cover and sealed, and addressed to the person to be charged.

(3) No assessment shall be confirmed or altered until any appeal against such objection has been heard and determined.

142. If—

(a) the commissioners to whom an appeal is made see cause to disallow an objection of the surveyor to a schedule; or

(b) on the hearing of an appeal, the commissioners are satisfied with the assessment made by the additional commissioners, or if, after the delivery of a schedule, they are satisfied therewith, and have received no information as to its sufficiency,

they shall direct the assessment to be confirmed or to be altered in accordance with any such schedule, as the case may require.

143.—(1) Whenever the general commissioners are dissatisfied with an assessment delivered to them by the additional commissioners or with a schedule, or if they require further information relating thereto, they may, at any time and from time to time, by precept, put any questions in writing concerning the assessment or schedule, or any matter which is contained or ought to be contained therein, or concerning any deductions made in arriving at the profits or gains, and the particulars thereof, and may require true and particular answers in writing, signed by the person to be charged, to be given within seven days after the service of the precept.

(2) (a) The person to be charged shall, within the time limited, either answer any such questions in writing signed by him, or shall tender himself to be examined orally before the commissioners, and may object to, and refuse to answer, any question, but the substance of any answer or answers given by him orally shall be taken down in writing in his presence, and be read over to him, and after he has had liberty to amend any such answer or answers he may be required to verify the same on oath to be administered to him by any one of the commissioners, and every such oath shall be subscribed by the person by whom it is made.

(b) Where any clerk, agent or servant of the person to be charged tenders himself, on behalf of such person, to be examined orally before the commissioners, the same provisions shall apply to his examination as in the case of the person to be charged who tenders himself to be examined orally.

144.—(1) The general commissioners may summon any person whom they think able to give evidence respecting an assessment made or to be made on another person, to appear before them to be examined, and may examine such person on oath (except the clerk, agent, servant or other person confidentially employed in the affairs of a person to be charged who shall respectively be examined in the same manner, and subject to the same restrictions as in the case of a person to be charged who tenders himself to be examined orally).

(2) The oath shall be that the evidence to be given, touching the matter in question by the person sworn, shall be the truth, the whole truth, and nothing but the truth, and the said oath shall be subscribed by the person by whom it is made.

(3) A person who after being duly summoned—

(a) neglects or refuses to appear before the commissioners at the time and place appointed for that purpose; or

(b) appears, but refuses to be sworn or to subscribe the oath; or

(c) refuses to answer any lawful question touching the matters under consideration,

shall forfeit a sum not exceeding twenty pounds:

Provided that the penalty imposed in respect of any offence under paragraph (b) or (c) hereof shall not apply to any clerk, agent, servant or other person as aforesaid

145. If—

(a) a person has neglected or refused to deliver a schedule in accordance with a precept of the commissioners; or

(b) any clerk, agent, or servant of, or any person confidentially employed by, a person to be charged, having been summoned, has neglected or refused to appear before the commissioners to be examined;

(c) the person himself, or his clerk, agent, or servant or other person as aforesaid, has declined to answer any question put to him by the commissioners; or

(d) an objection has been made to a schedule, and the objection has not been appealed against; or

(e) the commissioners decide to allow any objection made by the surveyor;

the commissioners shall ascertain and settle, according to the best of their judgment, the sum in which the person chargeable ought to be charged, and shall make an assessment and charge accordingly.

146.—(1) If the general commissioners —

(a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person to be charged or

(b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time within the year of assessment or within three years[43] after the expiration thereof,

they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess.

(2) If the person to be charged has neglected or refused to deliver a statement or schedule, the said commissioners may charge him in a sum not exceeding treble the amount of the tax with which, in their judgment, he ought to be charged. Such sum shall be added to the assessment and applied in the same manner as other increased charges are applied

147.—(1) Where proceedings in order to an assessment under Schedule D are taken before the special commissioners, the person assessed, or the surveyor, may appeal against the assessment signed and allowed by those commissioners, in like manner, and under the like provisions, as in the case of appeals against assessments made by the additional commissioners.

(2) Any such appeal shall be determined by the special commissioners, and if either the person assessed, or the surveyor, thereupon expresses dissatisfaction with their determination as being erroneous in any particular, the special commissioners shall, if required to do so, state and sign a special case, setting out the questions which arose on the appeal, and their determination thereon, and transmit it to the Commissioners of Inland Revenue for their opinion. The Commissioners of Inland Revenue shall subscribe their opinion on the case transmitted to them, and their decision shall be final and conclusive, subject to any relevant provisions of this Act relating to the statement of a case for the opinion of the High Court, and the assessment made shall be altered or confirmed accordingly

148.—(1) An appeal against—

(a) an assessment under Schedule D[44] or an objection by a surveyor to such an assessment, or a surcharge under that Schedule;

(b) an assessment in respect of any concern described in Rules 1 and 2 of No. III of Schedule A;

(c) . . .[45]

may be made to the special commissioners, instead of to the general commissioners, on due notice in writing being given to the surveyor, within the time limited for notices of appeal to the general commissioners in similar cases.

(2) Every such appeal shall be heard and determined by the special commissioners, and their determination shall be final and conclusive, subject to the provisions of this Act relating to the statement of a case for the opinion of the High Court.

(3) Provided that no claimant for the exemption granted by this Act, in a case where the total income does not exceed one hundred and thirty pounds a year, shall be allowed to appeal to the special commissioners, but every such claim shall be heard and determined by the general commissioners.

149.—(1) (a) Immediately after the determination by the general commissioners, or by the special commissioners, of an appeal under this Act,

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[43] Extended to six years after the date of the offence, Act of 1923, s. 23 (1).
[44] These provisions are applied to assessments under Sched. E, Finance Act, 1922, s. 19.
[45] Obsolete since repeal of Sched. B, r. 8, by Act of 1941.

the appellant or the surveyor, if dissatisfied with the determination, as being erroneous in point of law, may declare his dissatisfaction to the commissioners who heard the appeal.

(b) Having declared his dissatisfaction, he may, within twenty-one days after the determination, by notice in writing addressed to their clerk, require the commissioners to state and sign a case for the opinion of the High Court thereon.

(c) The party requiring the case shall pay to the clerk to the commissioners a fee of twenty shillings for and in respect of the same, before he is entitled to have the case stated.

(d) The case shall set forth the facts and the determination of the commissioners, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within *twenty-one*[65a] days after receiving the same.

(e) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(2) (a) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm, or amend the determination in respect of which the case has been stated, or shall remit the matter to the commissioners with the opinion of the Court thereon, or may make such other order in relation to the matter . .[66]

(b) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended

(c) Subject to Rules of Court, the authority and jurisdiction of the High Court may be exercised by a judge of the High Court sitting in chambers, and either in vacation or in term time.

(3) An appeal shall lie from the decision of the High Court or of any judge thereof to the Court of Appeal and thence to the House of Lords, and in Scotland, from the decision of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.

(4) Notwithstanding that a case has been required to be stated or is pending before the High Court, tax shall be paid in accordance with the assessment of the commissioners who have been required to state the case:

Provided that, if the amount of the assessment is altered by the order or judgment of the High Court, then—

(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

150. (*Books of assessment.*)[67]

151.—(1) A person who, either on his own account, or on behalf of another person, has been assessed to tax, and is by any error or mistake again assessed for the same year for the same cause and on the same account, may apply to the general commissioners, acting for the division comprising the parish in which the erroneous assessment was made, for relief, and the said commissioners on proof to their satisfaction of the double assessment shall cause the said assessment, or so much thereof as constitutes a double assessment, to be vacated.

[65a] Amended, Act of 1941, s. 47.

[66] Words as to costs repealed, Administration of Justice Act, 1933, s. 10 (3), and Third Sched.

[67] See Act of 1942, Tenth Sched., para. 7 (1).

(2) If it appears, to the satisfaction of the Commissioners of Inland Revenue, that a person has been assessed more than once for the same cause and for the same year, they shall direct the whole, or such part of any such assessment as appears to be an overcharge, to be vacated, and thereupon the same shall be vacated accordingly.

(3) If it is proved, to the satisfaction of the Commissioners of Inland Revenue, that any such double assessment as aforesaid has been made, and that payment has been made on both assessments, they shall order the amount of the overpayment to be repaid to the applicant.

152. (*Charge duplicates.*)

PART VIII—COLLECTION

153. (*Delivery of duplicates of assessments*)[68]

154.—(1) An extract from any assessment made by the special commissioners, certified under the hand of their clerk, in such form as the Commissioners of Inland Revenue may prescribe, shall be sufficient authority to the proper officer to whom that extract is transmitted to receive, bring to account, and give discharges for the tax included in the extract paid to him.

(2) If payment is not made to the proper officer, the special commissioners shall make a duplicate of the assessment and deliver it, together with their warrant for levying the amount of tax due, to the collector for the parish in which the person charged resides, who shall levy the same in accordance with the warrant.

155. (*Collection of tax in public departments*)

156. (*Collection under number or letter*)[69]

157.—(1) Income tax contained in an assessment for any year shall except as otherwise provided in this section, be payable on or before the first day of January in that year, but tax included in an assessment for any year, which is signed or allowed on or after the first day of January, shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed.

(2) (a) Tax for any year shall, in cases to which this subsection applies, instead of being payable on or before the first day of January in that year, or on such other date as is specified in subsection (1) of this section, be payable in two equal instalments, the first on or before the first day of January in that year, or on such other day as aforesaid, and the second on or before the following first day of July;

But where the assessment is not signed and allowed until after the said following first day of July, this subsection shall not have effect, and the tax shall be due and payable as provided in subsection (1) of this section;

(b) This subsection applies in cases of tax charged under No. I[70] or No. II of Schedule A and tax charged on any individual or firm under Schedule B in respect of lands occupied for husbandry only, and tax charged on any individual or firm under Schedule D, or the rules thereof, in respect of the profits or gains of any trade or of any profession or vocation, and tax charged on any individual in respect of any office or employment, whether under

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[68] See Act of 1942, Tenth Sched., para. 7 (1).

[69] See Act of 1942, Tenth Sched., para. 11.

[70] See Act of 1927, s. 21

Schedule D or Schedule E, except individuals whose tax is deducted at definite intervals of less than half a year.[71]

(c) The provisions of this Act as to the recovery of tax shall apply to each instalment of the tax, in the same manner as they apply to the whole amount of the tax.

(3) Railway companies in England and Ireland shall pay tax under Schedule D by four quarterly payments, that is to say, on or before the twentieth days of June, September, December, and March respectively, in each year.[71]

158.—(1) Every collector shall, when the tax becomes due and payable, make demand of the respective sums contained in the duplicates and given to him in charge to collect, from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require.

(2) A collector of tax under Schedules A and B shall, in the demand note delivered before payment thereof, distinctly describe the property to which the assessment relates, and specify the amount of the assessment and the rate at which the tax is charged thereon.

(3) On payment of the tax the collector shall, without charge, give a receipt under his hand, on the prescribed form, and if he has failed to give the particulars required by subsection (2) of this section in the demand note, he shall give them in the receipt

159. (*Payment of tax in advance subject to discount*)[72]

160. If the Commissioners of Inland Revenue make arrangements for the collection of tax by means of stamps in any case, they may prepare and issue any stamps required for the purpose, and the provisions (including penal provisions) of the Stamp Duties Management Act, 1891, as amended by any subsequent Act, and section sixty five of the Post Office Act, 1908, shall apply to any such stamps

161.—(1) If a person chargeable to tax is an infant, or dies—

(a) the parent, guardian or tutor of the infant shall be liable for the tax in default of payment by the infant; and

(b) the executor or administrator of the person deceased shall be liable for the tax charged on such deceased person,

and on neglect or refusal of payment any such person so liable as aforesaid may be proceeded against in like manner as any other defaulter.

(2) A parent, guardian or tutor who makes such payment shall be allowed all sums so paid in his accounts, and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

(3) If the owner of any lands, tenements, hereditaments, or heritages, occupied by him at the time an assessment for any year under Schedule A was made, dies before payment of the tax, the heirs, executors, administrators, or assigns, or other persons who become entitled on his death, to the rents and profits thereof, shall be liable to pay all arrears of tax due at the time of the death, or, if no arrears are due, the tax payable for the period up to the time of the death, together with, in either case, the tax payable for the remainder of that year, according to their respective interests, without any new assessment.

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[71] Words and sub-s. 4 repealed, Employments Act, 1943, s. 5 (3). The preceding words "or Schedule E . . . year" seem also obsolete.

[72] Repealed, Act of 1942, s. 49, and Twelfth Sched.

162.—(1) If a person neglects or refuses to pay the sum charged, upon demand made by the collector . . .,[79] the collector shall, for non-payment thereof, distrain upon the lands, tenements and premises in respect of which the tax is charged, or distrain the person charged by his goods and chattels, and all such other goods and chattels as the collector is hereby authorised to distrain, without any further authority for that purpose than the warrant delivered to him on his appointment.

(2) For the purpose of levying any such distress, a collector may, after obtaining a warrant for that purpose, under the hands and seals of the general commissioners, break open, in the daytime, any house or premises, calling to his assistance any constable or other peace officer. Every such constable or officer shall, when so required, aid and assist the collector in the execution of the warrant and in levying the distress in the house or premises.

(3) A levy or warrant to break open shall be executed by, or under the direction of, and in the presence of the collector.

(4) A distress levied by the collector shall be kept for five days, at the costs and charges of the person neglecting or refusing to pay.

(5) If the person aforesaid does not pay the sum due, together with the costs and charges, within the said five days, the distress shall be appraised by two or more inhabitants of the parish in which the distress is taken, or by other sufficient persons, and shall be sold by public auction by the collector or his deputy for payment of the sum due and all costs and charges. The costs and charges of taking, keeping, and selling the distress shall be retained by the collector or his deputy, and any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

(6) If a collector advances and pays over to the proper officer any sum of money on account of tax charged on some other person, whether at the request of that person or not, he may, in default of repayment to him of that sum at any time within six months after the payment, levy the tax in like manner as if that sum of money had not been advanced and paid.

163.—(1) No goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the collector, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made.

Provided that where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the collector the tax which is due for one whole year, proceed in his seizure in like manner as if no tax had been claimed

(2) In case of neglect or refusal to pay the tax so claimed or the tax for one whole year, as the case may be, the collector shall distrain the goods and chattels, notwithstanding the seizure or assignment, and shall proceed to the sale thereof, as prescribed by this Act, for the purpose of obtaining payment of the whole of the tax charged and claimed, and the reasonable costs and charges attending such distress and sale, and every collector so doing shall be indemnified by virtue of this Act

164. If lands charged under Schedule A are unoccupied, and no distress can be found thereon at the time the tax is payable, the collector for the time

[79] See Act of 1942, Tenth Sched., para. 8 (2).

being of the parish in which the lands are situate may at any future time when there is any distress to be found on the lands, enter, seize, and sell, under the same powers as if a distraint had been made on the lands at the time the tax became due and as if the occupier had been in occupation at that time.

165.—(1) If a person neglects or refuses to pay tax charged upon him by virtue of this Act within ten clear days after demand as aforesaid, and no sufficient distress can be found whereby the same may be levied, the general commissioners may, by warrant under their hands and seals, commit him to prison, there to be kept without bail until payment be made of that sum or security given to their satisfaction for payment thereof, together with such further sum, as the commissioners shall adjudge to be reasonable, for the costs and expenses of apprehending and conveying him to prison; and every such person shall be detained and kept in prison according to the tenor and effect of the warrant.

(2) By direction of the Treasury or of the Commissioners of Inland Revenue, the general commissioners shall issue their warrant to the governor of the prison in which any defaulter is detained under their warrant, directing the liberation of the defaulter, and, on receipt thereof, the governor shall forthwith release and discharge him out of custody, if he is under detention for no other cause than as set forth in the warrant of commitment.

166. In Scotland, the following provisions shall have effect:—

(1) Upon certificate made to them by the collector for the division, district, or county, that any tax is due and not paid, the general commissioners, or sheriff or sheriff substitute for the county, shall issue a warrant for the said collector recovering the said tax by pounding the goods and effects of any person entered in the certificate as being a defaulter, and any person who has made default in paying any sum which may be levied on him in respect of tax may be entered in the certificate as a defaulter, notwithstanding that he was not named in the assessment to tax:

(2) The warrant shall be executed by the sheriff's officers of the county:

(3) The goods and effects so pounded shall be detained and kept on the ground, or at the house where the same were pounded, or in such other place of which the owner shall have notice, near to the said ground or house, as the officer so pounding the same shall think proper, for the space of five days, during which time the said goods and effects shall remain in the custody of the said officer, and liable to the payment of the whole tax in arrear and to the costs to be paid to the officer who pounded the same as hereinafter directed, unless the owner from whom the same was pounded shall redeem the same, within the said space of five days, by payment to the officer of the said tax in arrear and costs, to be settled in the same manner as if the said goods and effects had been sold as hereinafter directed:

(4) The goods and effects so pounded shall, after the expiration of the said five days, be valued and appraised by any two persons to be appointed by the officer (which two persons shall be obliged to value the same, under the penalty of forty shillings sterling for each neglect or refusal), and shall be sold and disposed of, at a sum not less than the value, by the officer who does poind the same:

(5) The value shall be applied, in the first place to the satisfaction and payment of the tax owing by the person whose goods are so

poinded, and, in the second place, to the payment for the trouble of the officer so poinding, at the rate of two shillings per pound of the tax for which the goods shall be so poinded unless the owner from whom the same were poinded shall redeem the same by payment of the appraised value, within the space of five days after the valuation, to the officer who poinded the same:

(6) In case any surplus remains of the price or value, after payment of the said tax, and after payment of what is allowed to be retained by the officer in manner herein directed, such surplus shall be returned to the owner from whom the goods were poinded:

(7) In case no purchaser appears at the said sale, then the said goods and effects, so poinded, shall be consigned and lodged in the hands of the sheriff of the county, or his substitute, and if not redeemed by the owner within the space of five days after the consignment in the hands of the said sheriff or sheriff substitute, the same shall be rouped, sold, and disposed of, by order of the sheriff, in such manner, and at such time and place, as he shall appoint, he always being liable to the payment of the tax to the said collector, and to payment to the officer who shall have poinded the same, for his trouble and expense, as before stated, and to the fees due to the officer, and being, in the third place, entitled to one shilling per pound of the value of the goods so disposed of, for his own pains and trouble, after preference and allowance of the said tax, and of what is appointed to be paid to the officer for his trouble

(8) There shall also be allowed, to the officer so poinding, the expense of preserving the said goods and effects, and of maintaining the cattle, if there should happen to be any among the goods and effects so poinded, from the time of poinding the same, during the period allowed to the owner to redeem them, and also the expense of the sale, and in like manner the expense shall be allowed to the sheriff or sheriff substitute, for preserving and maintaining the goods or cattle poinded, during the period that the owner is allowed to redeem, after consignment in his hands, and until the sale thereof, and also the expense of the sale, and where no goods or effects, sufficient for payment of the said tax, can be found to be so poinded, and the person liable neglects or refuses to pay the same, in every such case the commissioners, or the sheriff or sheriff substitute, is hereby authorised, by warrant, to commit such person to prison, there to be kept, without bail, until payment shall be made or security for payment be given:

(9) Every auctioneer, or seller by commission, selling by auction, in Scotland, any goods or effects whatsoever by any mode of sale at auction, shall, at least three days before he begins any sale by way of auction, deliver or cause to be delivered to the collector within whose district such sale is intended to be, a notice in writing, signed by such auctioneer or seller by auction, specifying therein the particular day when such sale is to begin, and the name and surname of the person whose goods and effects are to be sold, with his place of residence:

(10) If any such auctioneer or seller by auction shall sell any such goods and effects by way of auction, without delivering the notice hereinbefore required to be delivered, every such auctioneer, or person selling by auction, offending therein shall, for such offence, incur a penalty of fifty pounds.

167.—(1) No moveable goods and effects belonging to any person in Scotland, at the time any tax became in arrear or was payable, shall be liable

to be taken by virtue of any poinding, sequestration for rent, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects pays the tax so in arrear or payable:

Provided that where the tax is claimed for more than one year the person proceeding to take the said goods and effects may on paying the tax for one whole year proceed as he might have done if no tax had been so claimed.

(2) If the said person neglects or refuses to pay the tax so in arrear or payable, or the tax for one whole year, as the case may be, the tax claimed shall, notwithstanding any proceedings at his instance for the purpose of taking the said moveable goods and effects, be recoverable by poinding and selling the said moveable goods and effects under warrant obtained in conformity with the provisions contained in the last preceding section.

168. (*Recovery where defaulter has removed, etc.*)[74]

169.—(1) Any tax charged under the provisions of this Act may be sued for and recovered, . . .,[75] from the person charged therewith in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown can, or may at any time, be sued for and recovered, as well as by the summary means specially provided by this Act for levying the tax.

(2) . [76]

170.—(1) If the tax charged on tithes or teinds is not paid within the time limited, the collector and officer respectively may distrain upon the tithes or teinds or upon any other goods or chattels of the owner of the tithes or teinds wherever found, and may seize, take and sell so much thereof as is sufficient for levying the tax. Every such collector and officer shall have the like powers, for that purpose, as are exercisable in relation to tax in other cases under this Act.

(2) (a) Where tax is charged on any composition for, or any rent or payment in lieu of, tithes or teinds, the occupier of the lands and premises charged with the composition, rent, or payments, shall be answerable for the tax so charged, and may deduct the same out of the next payment on account thereof.

(b) Where tax is charged on the profits of manors or royalties, markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(c) In every such case the collector may distrain upon the persons respectively answerable, and may exercise all the powers in that behalf conferred by this Act.

171. Where, under the provisions of this Act, on an application made for the purpose either by a husband or a wife income tax has been charged on the profits or income of the wife as if she were not married, the power to distrain, in the case of non payment of any income tax payable by the wife, shall extend to the goods and chattels of the husband, as well as to the goods and chattels of the wife:

Provided that no distraint shall be made on the goods and chattels of the husband unless a written demand for payment shall first have been made on

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[74] See note [73].

[75] See note [66], p. 435.

[76] Sub-s. 2 repealed, Employments Act, 1943, s. 5 (3).

the husband, or left for him at his usual place of residence, and he shall have failed to pay the amount of tax payable by his wife within seven days of such demand.

175. (*Schedules of deficiencies, discharge and default.*)[76]

176. (*Schedules of arrears.*)[76]

PART IX—SPECIAL PROVISIONS APPLICABLE TO IRELAND

186. The general provisions of this Act shall, in their application to Ireland, have effect subject to, and so far only as they are applicable consistently with, the special provisions contained in this Part of this Act.

187.—(1) The annual value of all tenements and rateable hereditaments with reference to which tax is to be charged under Schedules A and B shall be ascertained according to the respective surveys and valuations from time to time in force for the purposes of poor rates.

Provided that the annual value of lands for the purposes of Schedule B shall be taken to be—

(a) the judicial rent fixed under the Land Law (Ireland) Acts or any of them, or

(b) the annual interest payable to the Irish Land Commission in lieu of rent under the Land Purchase (Ireland) Acts or any of them; or

(c) the purchase annuity payable under the Land Purchase (Ireland) Acts or any of them,

in any case in which it is shown that the judicial rent, the annual interest in lieu of rent, or the purchase annuity, as the case may be, is less than the annual value according to the survey or valuation aforesaid.

(2) The said tax under Schedule A shall be charged upon the landlord or immediate lessor of a tenement or rateable hereditament, but may, if it appears to the special commissioners to be necessary or proper, be charged upon the person rated to poor rates in respect of any such property.

(3) Tax under Schedule B shall be charged upon the occupier of a tenement or rateable hereditament.

(4) In the event of an appeal by a person who considers himself aggrieved by any such assessment, if it is proved to the satisfaction of the special commissioners by whom the appeal is heard, or the recorder or county court judge by whom the appeal is re-heard, as the case may be, that the annual value on which the assessment is based exceeds the annual rent at which the property in respect of which the assessment is made is worth to be let from year to year, relief shall be given by reducing the assessment and charging the tax on the amount on which it would have been charged if that rent had been adopted as the basis of the assessment instead of such annual value.

(5) If such annual rent at which the property is worth to be let from year to year exceeds the actual rent payable yearly by the tenant or occupier, the landlord or immediate lessor shall be assessed and charged, under Schedule A, on the amount of such actual rent only, and the tenant or occupier shall be assessed and charged under Schedule A on the difference, subject to any claim for exemption, abatement, or relief to which any of the aforesaid persons may respectively be entitled.[77]

[76] See Act of 1942, Tenth Sched., para. 7 (1).

[77] Sub s. 6 repealed, Finance Act, 1926, s. 25 (7) and Fourth Sched.

188. Assessments under Schedules A and B—

(a) shall be made by the surveyors or other officers acting in that behalf under the direction of the Commissioners of Inland Revenue;

(b) shall be made for and comprise the respective premises which are situate in an administrative county, county borough, county district, or such other district as the said Commissioners shall direct; and

(c) shall be signed by the special commissioners

189.—(1) Assessments under Schedules D and E shall be made by such surveyors or other officers as the Commissioners of Inland Revenue shall appoint in that behalf.

(2) The special commissioners shall—

(a) sign and allow the assessments;

(b) appoint the times and places for hearing appeals against the assessments; and

(c) cause due notice of every such assessment and the amount thereof, and of the time and place for hearing any appeal against the same to be given by an officer of inland revenue to each person assessed.

190.—(1) The following persons, that is to say—

(a) the special commissioners acting in relation to the signing or allowing of any assessment, to the hearing and determining of any appeal, and to the making and signing of any duplicate and any warrant for collecting and levying the tax and sums of money charged; and

(b) all surveyors and other officers acting in relation to the making of any assessment, or to the assessing or charging of any person therein or thereby; and

(c) all persons named or appointed by the special commissioners to be respectively collectors of the tax and sums of money in relation to the collecting, levying, distraining for, or otherwise recovering of the same;

shall respectively have, use, and exercise all such and the like powers and authorities as any general commissioners, special commissioners, or additional commissioners, and as any surveyors, assessors, collectors, or other officers respectively have, or may use or exercise, in England in relation to the making or allowing of any assessment under this Act, or to the assessing or charging of any person, or to the hearing or determining of any appeal, or the collecting, levying, distraining for or otherwise recovering of the tax, so far as such powers and authorities, or any of them, are applicable, or may be adapted, to the performance of similar acts, matters, and things in Ireland.

(2) In addition to the aforesaid powers, any power which in England may be exercised by the general commissioners may, in Ireland, be exercised by the special commissioners.

(3) Any power which in England would, in recovery of tax, be exercised by a collector for a parish may, in Ireland, be exercised by any collector within the area for which he is appointed.

191.—(1) For the purpose of assessing tax chargeable under Schedules A and B, the secretary, or person acting as such, to the county council of an administrative county and the town clerk, clerk, or person acting as such, to a county borough or an urban district council shall, when required by the Commissioners of Inland Revenue, transmit to them, at the head office of the said Commissioners in Dublin, true copies of the last poor rates made

by the county council, county borough council, or urban district council for their respective rating areas or any part thereof.

(2) The Commissioners of Inland Revenue shall pay to the said persons respectively the expenses of making all such copies, not exceeding the rate of two shillings and sixpence for every one hundred ratings.

(3) If any such person as aforesaid neglects to transmit such copies, after being required to do so by the Commissioners of Inland Revenue, he shall, for every such neglect, forfeit the sum of fifty pounds.

192.—(1) Every person shall, at the request of any surveyor, or other officer acting in the execution of this Act, produce to him any survey or valuation on which the rates for any administrative county, county borough, urban district, or part thereof are assessed or made, or any rate or assessment made under any Act relating to poor rates, which is in his custody or possession, and permit the surveyor or other officer to inspect the same and to take copies thereof, or extracts therefrom, without any payment.

(2) Any such person who, on request as aforesaid, refuses to produce any survey, valuation, rate, or assessment which is in his custody or possession, or to permit the inspection thereof, or the taking of such copies thereof or extracts therefrom as the surveyor or other officer may think fit, shall, for every such refusal, forfeit the sum of fifty pounds.

193.—(1) If in any case it appears to the Commissioners of Inland Revenue that any valuation for the purposes of poor rates which is for the time being in force is not correct (having reference to the principles according to which the same ought by law to have been made) with respect to all or any of the tenements or rateable hereditaments included therein, they may direct the commissioner of valuation to make or cause to be made, for the purposes of income tax, a re-valuation of those tenements or rateable hereditaments in accordance with the principles prescribed by law, and the commissioner of valuation shall, with all convenient speed, make the re-valuation or cause it to be made accordingly, and shall sign and transmit the same to the said Commissioners.

(2) Tax chargeable under Schedules A and B shall after any such re-valuation, be assessed and charged in accordance therewith.

(3) A person assessed in accordance with any such re-valuation may, if aggrieved thereby, appeal against the assessment on the ground that the re-valuation is incorrect, and the special commissioners by whom any such appeal is heard, or the recorder, or county court judge by whom any such appeal is re-heard, may alter the re-valuation and the assessment, and make such an order with reference thereto, as they or he may think fit.

194. In assessing tax chargeable under Schedule A on the landlord or immediate lessor—

(a) If the amount or annual value, on which the assessment is made, is not less than the annual rent reserved or payable to him for the premises in respect of which the assessment is made, an allowance or abatement shall be made in respect of the amount of poor rates paid or borne by him for the same premises in the preceding year; and

(b) If the amount or annual value on which the assessment is made is less than the said rent, an allowance or abatement shall be made of the sum by which the amount of the poor rate, added to the sum on which the assessment is made, exceeds that rent.

195. All appeals against assessments shall be heard and determined by the special commissioners, and their determination on any such appeal shall be

final and conclusive, unless the person assessed requires, that his appeal shall be re-heard as hereinafter provided, or unless, under the provisions of this Act, a case is required to be stated for the opinion of the High Court, and, in default of appeal by a person to whom notice of assessment, and of the time and place for hearing appeals, has been given, the assessment made on him shall be final and conclusive.

196.—(1) Any person who is aggrieved by the determination of the special commissioners in any appeal against an assessment made upon him may, on giving notice in writing to the surveyor, within ten days after such determination, require that his appeal shall be re-heard by the recorder or county court judge, as the case may be, having jurisdiction in the place where the assessment was made: and the special commissioners shall transmit to the said recorder or county court judge, as the case may be, any statement or schedule in their possession which was delivered to them for the purposes of the appeal.[78]

(2) The said recorder or county court judge shall, with all convenient speed, re-hear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all matters consequent thereon, as the special commissioners might have and exercise, and his determination thereon shall be final and conclusive.

(3) The recorder or county court judge shall make a declaration in the form of the declaration required to be made by a special commissioner as set out in Part I of the Fourth Schedule to this Act

197. (*Delivery of duplicates and warrants to collectors.*)[79]

198. Collectors of tax shall receive such reasonable remuneration for their services in the execution of this Act as the Treasury may prescribe.

199.—(1) Tax under Schedules A and B may be collected, recovered and levied by the collector by distress from the person charged, or from the occupier of the property charged, or upon the premises in respect of which the assessment is made, and all goods and chattels, to whomsoever the same may belong, found upon any such premises may be distrained and sold for the recovery of any such tax; or such tax, or any arrears thereof, may be collected, recovered and levied in the same manner as other tax charged in Ireland under this Act may be collected, recovered and levied.

(2) Provided that tax charged under Schedule A in respect of any tenement or hereditament may be collected, recovered and levied by the collector from the landlord or immediate lessor of the premises charged, whether he be named in the assessment or not.

(3) Where an assessment under Schedule A has been made on the tenant or occupier of premises charged, the landlord or immediate lessor shall only be liable to proceedings under subsection (2) of this section, in default of payment by the tenant or occupier, and for so much only of the tax charged as is chargeable in respect of the rent payable yearly to him for the premises charged.

200. No administrative county, county borough, county district, or place in Ireland shall be answerable for the amount of the tax charged therein, or for any neglect or default of the collector in demanding or collecting the

[78] See *R. v. Recorder of Belfast* (1934), 18 Tax C. 586.
[79] See Act of 1942, Tenth Sched., para 7 (1).

same, and no re-assessment shall be made for any arrears or loss occasioned by any such neglect or default.

201. Where a person liable to tax under Schedule A is authorised under this Act to retain tax from any annual payment made by him from which he is by law entitled to deduct any sum on account of poor rates, the tax to be retained shall be calculated by reference to the net sum payable by him after the allowance for poor rates.

202. Claims of exemption, abatement, or relief, and all claims for the repayment of tax under this Act, shall be made in such manner and form as the Commissioners of Inland Revenue may prescribe, and shall be made to, and finally determined by, the special commissioners, subject, as regards claims for exemptions, to the like appeal by way of re-hearing as in the case of assessments.[80]

203. In computing the income of any person for the purposes of this Act, the computation, so far as concerns any rent derived from tenements or hereditaments chargeable under Schedule A, shall be made after allowing for the amount of any poor rates chargeable on that rent by way of deduction or otherwise.

204.—(1) If any landlord or immediate lessor of any tenement or hereditament charged to tax under Schedule A has paid the same and proves, to the satisfaction of the special commissioners, that the rent, or any part thereof, due or payable to him in respect of that tenement or hereditament, for the period for which that tax was charged, has been wholly and irrecoverably lost by reason of—

(a) the bankruptcy, insolvency, or absconding of the tenant or occupier by whom such rent was payable; or

(b) the fraudulent assignment or removal of his goods by the said tenant or occupier; or

(c) the tenement or hereditament being left waste and unoccupied,

he shall be entitled to be repaid such proportion of the said tax as he shall have paid in respect of the rent so lost; and the said commissioners shall issue an order for repayment, in like manner as in other cases of repayment.

(2) Any such claim for repayment shall be made within six months after the expiration of the year of assessment.

205. An action of ejectment for non-payment of rent shall not be defeated on the ground that the person liable to pay the rent is entitled under this Act to a deduction which would reduce the amount due by him below a year's rent.

206. A justice of the peace may administer any oath required or permitted by this Act to be taken before a commissioner or justice by any officer or person in any matter touching the execution of this Act

Part X—Miscellaneous

207. Any person who, on his own behalf or on behalf of another person or body of persons, delivers a statement of the amount of the annual value or profits in which any tax is chargeable, shall, so far as the same are respectively applicable, observe the rules and directions contained in the Fifth Schedule to this Act.

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[80] See *R.* v. *Deputy Recorder of Belfast*, [1927] N. Ir. 159; 21 Tax C. 108.

208. The provisions in this Act contained which are applied to the tax under any particular Schedule shall, if also applicable to the tax under any other Schedule and not repugnant to the provisions for ascertaining, charging or levying the tax under such other Schedule, be applied in ascertaining, charging and levying tax under that Schedule, as if the application of those provisions thereto had been expressly and particularly directed.

209.—(1) In arriving at the amount of profit or gains for the purpose of income tax—

(a) no other deductions shall be made than such as are expressly enumerated in this Act;

(b) no deduction shall be made on account of any annual interest, annuity or other annual payment to be paid out of such profits or gains in regard that a proportionate part of the tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains from any property described in this Act, or from any office or employment of profit, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

210. In order to ensure the collection in due time of tax which may be granted for any year commencing on the sixth day of April, all such provisions contained in this Act, or in any other Act relating to tax (including super-tax), as were in force on the preceding day, shall have full force and effect with respect to tax which may be so granted, in the same manner as if the said tax had been actually granted by Act of Parliament and the said provisions had been applied thereto by the Act.

211.—(1) Where in any year of assessment any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately imposed for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI of Schedule D, and the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Commissioners of Inland Revenue a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by those Commissioners in that behalf.

(2) Any person liable to pay any rent, interest or annuity[81] or to make any other annual payment, shall be authorised to make any deduction on account of tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing tax for the year had been in force.

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[81] Extended, Finance Act, 1930, s. 12 (2).

212. No provision contained in the County Rates Act, 1852, or in the Union Assessment Committee Act, 1862, shall authorise any assessment committee under those Acts to require any assessor, collector or other person employed in the assessment or collection of tax to make or transmit, or to permit any other person to make, copies of or extracts from any assessment, rate or rate book or any document relating to the assessment or collection of tax upon profits of trade in respect of quarries, mines, ironworks, gasworks or other concerns in the nature of trade or manufacture chargeable under Schedule A, nor shall any such person be required to attend before any such committee to produce any such assessment, rate, rate book or document, or to be examined concerning the same.

213. No letters patent granted or to be granted by the Crown to any person, city, borough, or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any of the inhabitants of the same, from tax, and all non obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

214.—(1) Warrants and precepts of the general commissioners shall be executed by the respective persons to whom they are directed in any part of the same county within any division of which those commissioners have jurisdiction.

(2) Constables and other peace officers shall aid in the execution of this Act, and obey and execute such precepts and warrants as are directed to them in that behalf by the respective commissioners under the authority of this Act.

215. (*Provisions as to forms.*)

216.—(1) An assessment, charge, warrant or other proceeding which purports to be made in pursuance of this Act shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(2) An assessment or a charge made upon an assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name or surname of the person liable, or

(ii) the description of any profits or property; or

(iii) the amount of the tax charged;

(b) by reason of any variance between the notice and the certificate of charge or assessment:

Provided that in cases of charge the notice of charge shall be duly served on the person intended to be charged, and the notice and certificates shall respectively contain, in substance and effect, the particulars on which the charge is made; and every such charge shall be heard and determined on its merits by the general commissioners.

217. No receipt, certificate of payment, affidavit, appointment or valuation given or made in pursuance and for the purposes of this Act, and, in England, no bond or other security given under this Act by a collector or other person

in respect of the collection, accounting for, or remitting of tax, shall be liable to any stamp duty.

218. Assessments, duplicates of assessments, minute books, and other public books and papers relating to tax in the custody or possession of any clerk, assessor, or collector, or the legal representatives of any person who has died or shall die during the holding of any such office, or after his removal from the same, or his agent or attorney, or of any other person, shall be the property of the general commissioners acting in their respective divisions for the time being, and shall be placed with them and remain in their custody and possession, or the custody and possession of their respective clerks for the time being, or of such other person as the respective commissioners for the time being may from time to time at their meetings direct.

219.—(1) A person who has in his custody or possession any book or papers relating to tax shall, within one month next after notice in writing from the Commissioners of Inland Revenue requiring him to do so, deliver them to the person named in the notice, and, if he fails to do so, shall, for every such offence, incur a penalty of fifty pounds.

(2) The receipt of the person named in the notice shall be a sufficient discharge to the person delivering the books or papers.

220.—(1) Notices required to be affixed, delivered or served may be issued to the respective assessors by the surveyors of the districts in which the notices are required, for the purpose of being so affixed, delivered or served.

(2) The issue to the assessors of any such notices by a surveyor shall be as effectual as delivery to them by the general commissioners concerned.

(3) Any directions which have been allowed by the respective commissioners with reference to the time and manner of fixing, delivering or otherwise serving the notices, and the persons on whom they are to be served, shall, when given by the surveyor to a collector or assessor, be observed by him.

(4) A notice or form which is to be served on a person may be either delivered to him or left at his usual or last known place of abode.

(5) A notice to a person to be given by a surveyor may be served by registered post.

(6) A notice to be given by the Commissioners of Inland Revenue may, by their order, be signed by one of their secretaries or assistant secretaries, and if purporting to be so signed by their order shall be valid and effectual.

(7) Notices to be given or delivered to, or served on, the general commissioners or the additional commissioners shall be valid and effectual if given or delivered to or served on their clerk.

(8) Provided that—

(a) any notice or other document to be given, served, sent or delivered, under this Act or any Act relating to income tax, may be served by post in such cases as the Commissioners of Inland Revenue direct by regulations to be made by them for the purpose; and

(b) any notice or other document to be given, served, sent or delivered to or on an employed person may be served by post at his place of employment.

221.—(1) No proceedings shall be commenced against any person for the recovery of any fine, penalty or forfeiture under this Act except by order of the Commissioners of Inland Revenue and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland.

(2) Any fine or penalty under this Act may, except as otherwise provided, be sued for and recovered, with full costs of suit, in the High Court, and any such penalty shall be sued for by information.

(3) Proceedings in the High Court for the recovery of any fine or penalty, and proceedings in England, before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the recovery of any penalty which is not recoverable in the High Court, may be commenced within *six*[92] years next after the fine or penalty was incurred.

(4) Where a pecuniary penalty not exceeding twenty pounds, or a penalty exceeding twenty pounds which is directed to be added to the assessment, is recoverable in the High Court, that penalty may, in lieu of being so recovered, be recovered in England before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the county where the offence was committed, by proceedings to be commenced within *six years*[92] next after the penalty was incurred.

(5) The proceedings before any general commissioners or any sheriff shall be by way of information in writing, made to them, and upon a summons to the person accused to appear before them at such time and place as they shall fix, and they shall examine into the matter of fact, and hear and determine the same in a summary way, and they shall give judgment for the penalty, or such part thereof as they shall think proper to mitigate the same to, and shall assess the penalty on the person accused by way of supplementary assessment, and the penalty shall be levied in like manner as tax.

The adjudication on such proceedings shall be final and conclusive, and the proceedings and decree of the said commissioners or sheriff shall not be removable, by any process whatever, into any court of law.

222.—(1) The Commissioners of Inland Revenue may, in their discretion, mitigate any fine or penalty, or stay or compound any proceedings for recovery thereof, and may also, after judgment, further mitigate or entirely remit the fine or penalty, and may order any person imprisoned for any offence to be discharged before the term of his imprisonment has expired. The Treasury may mitigate or remit any such fine or penalty, either before or after judgment.

(2) Moneys arising from fines, penalties and forfeitures, and all costs, charges and expenses payable in respect thereof or in relation thereto respectively, shall be accounted for and paid to the Commissioners of Inland Revenue or as they direct.

223. Where an increased rate of tax is imposed as a penalty, or as part of or in addition to a penalty, the penalty and increased rate of tax may be added to the assessment, and collected and levied in like manner as any tax included in such assessment may be collected and levied.

224. The provisions of this Act shall not affect any criminal proceedings for any felony or misdemeanour.

225.—(1) If any person, by himself or by any person in his employ, obstructs, molests, or hinders—

(a) an officer or any person employed in relation to any duty of income tax in the execution of his duty, or of any of the powers or authorities by law given to the officer or person; or

(b) any person acting in the aid of an officer or any person so employed;

he shall, for every such offence, incur a fine of one hundred pounds.

(2) Without prejudice to any other mode of recovery, the fine imposed under this section may be proceeded for and recovered in the same manner,

[92] Extended to six years, Act of 1923, s. 22 (1).

and, in the case of summary proceedings, with the like power of appeal, as any fine or penalty under any Act relating to the excise.

226. A surveyor who—

(a) wilfully makes a false and vexatious surcharge of tax; or

(b) wilfully delivers, or causes to be delivered, to the general commissioners a false and vexatious certificate of surcharge, or a false and vexatious certificate of objection to any supplementary return in a case of surcharge; or

(c) knowingly or wilfully, through favour, undercharges or omits to charge any person; or

(d) is guilty of any fraudulent, corrupt, or illegal practices in the execution of his office,

shall, for any such offence, incur a penalty of one hundred pounds, and on conviction shall be discharged from his office.

227. If any person, for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of tax, either for himself or for any other person, or in any return made with reference to tax, knowingly makes any false statement or false representation, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months with hard labour.

228. If in Scotland or Ireland any person, upon any examination on oath, or in any affidavit or deposition authorised by this Act, wilfully and corruptly gives false evidence, or wilfully and corruptly swears any matter or thing which is false or untrue, he shall on conviction be subject and liable to such punishment as persons convicted of perjury are subject and liable to.

229.—(1) A commissioner, sheriff, sheriff depute or sheriff substitute, clerk, surveyor, assessor, or collector who acts, or is employed, in the execution of this Act, shall not be liable to any penalty in respect of such execution other than is by this Act provided.

(2) Where any civil or criminal proceeding, against any officer or person employed in relation to any duty of income tax, on account of the seizure or detention of any goods, is brought to trial, and a verdict or judgment is given thereupon against the defendant, if the court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages, besides the goods seized, or the value thereof, nor to any costs, and the defendant shall not be liable to any punishment.

230.—(1) Anything required under this Act to be done by the Treasury may be signified under the hand of a secretary or assistant secretary to the Treasury.

(2) Anything required under this Act to be done by the general commissioners, the additional commissioners, the special commissioners, or any other commissioners may, save as otherwise expressly provided by this Act, be done by any two or more commissioners.

(3) Any general commissioner may administer an oath required or permitted to be taken before the general commissioners under this Act by any officer or person in any matter touching the execution of this Act.

231. In any proceedings under or arising out of this Act before any court or person empowered to take evidence, prima facie proof of the fact that any person was a commissioner or officer may be given by proving that, at the

time when any matter in controversy in any such proceedings arose, that person was reputed to be or had acted as a commissioner or officer.

234. In the event of a sufficient number of general commissioners not attending to sign and allow, in due time, the assessments and duplicates of the tax for any parish, any two general commissioners acting within the same county shall sign and allow any such assessments or duplicates.

235. All matters within the jurisdiction of the High Court of Justice under this Act shall be assigned in England and Ireland to the King's Bench Division of the High Court, and in Scotland to the Court of Session sitting as a Court of Exchequer.

236. All such regulations of the Commissioners of Inland Revenue as relate to—

(a) the assessment, charge, collection and recovery of super-tax; . . .[88]
(d) service by post;

shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days, or in the case of a regulation relating to super-tax within the next subsequent forty days, on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

237. In this Act, unless the context otherwise requires—

"Annuity fund" means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns to the Board of Trade, under the Assurance Companies Act, 1909;

"Assurance company" means any persons or body of persons to which the Assurance Companies Act, 1909, applies;

"Assessor" includes a surveyor acting as assessor when empowered so to act;

"Body of persons" means any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate;

"City division" means a division consisting of any city, borough, town, or other place, under the separate jurisdiction of any body of general commissioners;

"County division" means a division other than a city division and consisting of any county, riding or shire, or of any hundred, rape, lathe, wapentake, or other division of a county, riding, or shire, under the separate jurisdiction of any body of general commissioners;

"Foreign life assurance fund" means any fund representing the amount of the liability of an assurance company in respect of its life assurance business with policy-holders and annuitants residing out of the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom, and, where such a fund is not kept separately from the life assurance fund of the company, means

[88] Paras. (b) and (c) repealed, Employments Act, 1943, s. 8 (3).

such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts; such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company to the Board of Trade, under the Assurance Companies Act, 1909;

"Gazette" means, as the context requires, "London Gazette," "Edinburgh Gazette" or "Dublin Gazette";

"Incapacitated person" means any infant, married woman, lunatic, idiot, or insane person;

"Land Tax Commissioners" means the commissioners appointed, under authority of Parliament, for executing the Acts relating to land tax;

"Life assurance business" includes the business of granting annuities;

"Parish" means any city, town, ward, township, tithing, parish, place or precinct, or part thereof, for which a separate assessment of income tax has been, or can be, made, or for which an assessor or collector has been, or can be, appointed;

"Surveyor" means a surveyor of taxes and includes an inspector of taxes;

"Trade" includes every trade, manufacture, adventure or concern in the nature of trade. . . .[83a]

"Year of assessment" means, with reference to any tax, the year for which such tax was granted by any Act granting duties of income tax.

238. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that—

(a) Any notice, form, order, rule, regulation or direction prescribed, made, issued or given under any enactment repealed by this Act shall continue in force as if it had been prescribed, made, issued or given under this Act, and may be repealed, revoked, varied or amended accordingly:

(b) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or to the corresponding enactment of this Act:

(c) Any commissioner, officer or person appointed to act or employed under or by virtue of any enactment repealed by this Act in relation to duties of income tax shall continue and be deemed to have been appointed or employed under or by virtue of this Act:

(d) Where any provision repealed by this Act so far as it relates to income tax, and reproduced in this Act in relation to income tax, authorises or requires any appointment to be made or action to be taken, or imposes any penalty both in relation to income tax and in relation to any other tax or duty as respects which the provision in question is not repealed, then nothing in this Act shall authorise or require separate appointments or separate action or the imposition of penalties, both under the provision so repealed and under the corresponding provision of this Act, but the two provisions shall have effect as though they continued to be contained in one enactment relating both to income tax and to such other tax or duty as aforesaid:

[83a] Definition of "weekly wage earner" repealed, Employments Act, 1943, s. 5 (3).

(c) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

229.—(1) This Act may be cited as the Income Tax Act, 1918.

(2) This Act shall come into operation on the sixth day of April nineteen hundred and nineteen:

Provided that the provisions of this Act shall not apply to any duties of income tax granted by Parliament prior to the commencement of this Act, or to any enactment, matter or thing touching any such duties, and in respect of any such duties the Acts applicable thereto which are repealed by this Act shall have the same effect as if this Act had not been passed.

SCHEDULES

FIRST SCHEDULE

SCHEDULE A

Tax under Schedule A shall be charged in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, for every twenty shillings of the annual value thereof.

RULES APPLICABLE TO SCHEDULE A

No. I—General Rule for estimating the annual value of Lands, Tenements, Hereditaments or Heritages

In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value (except the properties mentioned in No. II and No. III of this Schedule), the annual value shall be understood to be:—

(1) The amount of the rent by the year at which they are let, if they are let at rackrent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

(2) If they are not let at a rackrent so fixed, then the rackrent at which they are worth to be let by the year.

No. II—Rules for estimating the annual value of certain Lands, Tenements, Hereditaments or Heritages which are not to be charged according to the preceding General Rule, and for determining the person chargeable.[94]

1. In the case of tithes, if taken in kind, . . .

2. In the case of dues and money payments in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and all teinds arising in Scotland, . . .

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[94] See Act of 1926, s. 28, and Third Sched.; the words indicating the sources of income and the proviso to rule 6, which "shall be deemed to be a rule of Sched. D, Case III," appear to be the only parts of No. II that are not obsolete.

3. In the case of tithes arising from lands, if compounded for, and all rents and other money payments in lieu of tithes arising from lands (except rentcharges confirmed under the Tithe Act, 1836), . . .

4. . . .

5. In the case of manors and other royalties, including all dues and other services or other casual profits (not being rents or other annual payments reserved or charged), . . .

6. In the case of fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof), . . .

. . . Provided that if the person chargeable satisfies the general commissioners for the division that any part of the fines has been applied as productive capital, on which a profit has arisen or will arise which is otherwise chargeable for the year for which the assessment is made, the commissioners may discharge the amount so applied from the profits liable to assessment and charge under this rule.[84]

7. In the case of all other profits not before enumerated (other than profits liable to deduction in pursuance of rules 1 and 4 of No. VIII of this Schedule) arising from lands, tenements, hereditaments or heritages not being in the actual possession or occupation of the person to be charged, . . .

8. . . .

No. III—Rules for estimating the annual value of certain other Lands, Tenements, Hereditaments, or Heritages which are not to be charged according to the preceding General Rule.[84]

1. In the case of quarries of stone, slate, limestone, or chalk, . . .

2. In the case of mines of coal, tin, lead, copper, mundic, iron, and other mines, . . .

3. In the case of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages, . . .

4. Tax under the above rules shall be assessed and charged on the person or body of persons carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.

. . . . . .

7.—(1) The computation in respect of any such mine carried on by a company of adventurers shall be made and stated jointly in one sum, but any adventurer may be assessed and charged separately if he makes a declaration of his proportion or share in the concern for that purpose.

(2) An adventurer so separately assessed and charged may set off against his profits from one or more of such concerns the amount of his loss sustained in any other such concern as certified by the commissioners for the division where the loss was sustained.

(3) In any such case one assessment and charge only shall be made on the balance of profit and loss, and shall be made in the parish where the adventurer is chargeable to the greatest amount.

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[84] See Act of 1926, s. 28, and Third Sched.; the words indicating the sources of income and rules 4 and 7, which "shall be deemed to be the rules of Sched. D. Case I, so far as regards" those sources appear to be the only parts of No. III that are still in force. Rule 5 is repealed by Finance Act, 1934, s. 30, and Fourth Sched.

No. IV—Rules for estimating Annual Value

1. Where—

(a) a landlord is subject to an agreement to pay or satisfy out of the rent reserved on any lands or tenements, any public local rates, taxes, or assessments, which by law are charged upon the occupier, or any composition for tithes; or

(b) any person entitled to a rent or other annual payment in lieu of tithes (other than a tithe rentcharge confirmed under the Tithe Act, 1836), or to any composition for tithes, pays or satisfies out of the amount thereof any such public local rates, taxes or assessments charged upon the same;

the annual value shall be estimated exclusive of any such public local charges, or composition for tithes, bona fide paid by the landlord or other person aforesaid, respectively, in and for the year preceding the year of assessment.

2. Where the owner is also occupier of the lands or tenements, and has paid any such public local charges or composition for tithes in respect thereof, the annual value shall be estimated in like manner.

3. If the assessor is satisfied with the amount contained in any account or statement of the annual value of properties to be assessed under this Schedule delivered under this Act, he shall make an assessment on that amount, and if he is not satisfied, or if no such account or statement has been delivered, he shall estimate to the best of his judgment the annual value of the property and make an assessment thereon.

4. Where the annual value is to be ascertained according to the general Rule of No. I of this Schedule, and that value cannot be otherwise ascertained, and the last poor rate in the parish was made throughout on the annual value as the same would be estimated under the said general rule or on a proportionate part thereof, the assessor may make his assessment by reference to the annual value for the purposes of the poor rate, but in all cases on the full amount of the annual value instead of on a proportionate part thereof.

5. Where any dwelling-house or tenement, together with the offices, gardens, and lands occupied therewith, or any lands separately occupied, is of an annual value under ten pounds, the assessor may estimate the annual value to the best of his judgment and make an assessment thereon without requiring a statement of the annual value to be delivered, unless the surveyor objects to his estimate and requires a notice for that purpose to be served.

6. An assessor who, not having required such statement, neglects to estimate the true annual value of any such property and to assess the same according to this Act, shall forfeit a sum not exceeding ten pounds.

7. If any tenant at rackrent produces to the assessor the lease or agreement in writing under which he immediately holds any premises chargeable under the general rule of No. I of this Schedule, and it appears therefrom that the premises have been let within the seven preceding years, and that no consideration in money other than the rent reserved is contained in the lease or agreement, the assessor may make his assessment according to that rent.

8. The tenant shall produce his lease or agreement to the assessor on request by him.

9. Any such assessment shall not be binding if it appears to the commissioners—

(a) that the lease or agreement does not express the full consideration in money or value for the demise or the rent bona fide paid for the same; or

(b) that the rent reserved is less than the rackrent on account of repairs or improvements effected, or to be effected by the tenant or his assigns; or

(c) that the lease or agreement was in any other respect made with intent

to conceal the annual value of the premises, or to diminish the estimate to be made thereon, or has been assigned to the tenant or any former tenant for any consideration in money or value paid or agreed to be paid.

10. In making any such assessment regard shall be had to—

(a) any increase of the amount of the rent reserved by reason of any agreement by the landlord to discharge the tenant's rates, taxes, assessments, or duties hereinbefore mentioned;

(b) any decrease in the amount of the rent by reason of any agreement by the tenant to discharge those of the landlord;

(c) any decrease in the amount of the rent by reason of any expenses incurred or to be incurred by the tenant or any assigns, whether mentioned or not in the lease or agreement; and

(d) any deductions to be made on account of any public rate or assessment hereinbefore described.

11. In the case of a demise for years of land made in consideration of a rent reserved and of improvements to be made at the cost of the tenant, if it is proved to the satisfaction of the general commissioners that the rent reserved was, in view of the improved value expected to be realised at the cost of the tenant, based upon an estimate of the mean annual value of the land throughout the term, and that the rent, so computed, is fixed and payable at the same amount in each year so that in consequence thereof the rent payable exceeds the annual value at the commencement of the term, the annual value for each year of assessment during the term of the demise shall be taken to be the amount of the rent reserved without variation, subject to the deductions allowed by this Act.

12. A tenant being—

(a) a tenant at rackrent under a parol demise from year to year within the period defined in the general rule of No. I of this Schedule; and

(b) a tenant who has neither the custody, nor the power to call for the production, of the lease or agreement under which he holds premises demised within the said period and who proves to the commissioners his inability to produce the same,

shall deliver to the assessor an account in writing, signed by him, stating the amount of the annual rent reserved on any such demise, and thereupon the same rules shall apply as in the case of a tenant who produces to the assessor his lease or agreement.

13. Lands held for a longer period than seven years, by a tenant at will or under a demise from year to year, shall be estimated and assessed at their annual value, unless the tenant proves to the satisfaction of the general commissioners that they are held under a demise which was commenced by an agreement made, and a rent fixed, within the period of seven years, on the determination of the former demise of those lands, by due notice within that period.

14. A person who wilfully—

(a) delivers any such account as aforesaid, which is false; or

(b) refuses, neglects, or omits to produce any lease or agreement with intent to conceal the annual value of the premises therein comprised, or to diminish the estimate to be made thereon,

shall forfeit the sum of twenty pounds, and may be charged in treble the tax chargeable, to be computed on the annual value of the premises and included in the assessment.

15. In Scotland—

(a) Every tenant of lands, tenements, or heritages shall, within ten days after service by the assessor of a notice requiring him to do so,

produce to the assessor the book, lease, or other agreement or articles in writing under which he holds:

(b) If any such documents of title are not within the custody, possession, or power of the tenant, or if there are no such documents, the tenant shall deliver to the assessor within the time limited as aforesaid, a written note stating the actual rent annually reserved, and any other valuable consideration given to the landlord for the tenancy:

(c) A tenant who wilfully neglects to comply with any such notice shall be liable to a penalty of treble the tax chargeable on such lands, tenements, or heritages:

(d) On the production of any such documents of title, the assessor may make his assessment according to the rent therein reserved, or if they are not produced, upon the rent reserved as disclosed in the written note, if he is satisfied that there was no other valuable consideration:

(e) If no written note is delivered, or if the assessor is not satisfied therewith, the assessor shall make an assessment in accordance with the provisions of this Act:

(f) If a farm, occupied by any such tenant, is distant more than ten miles from the dwelling-house of the assessor, the tenant may leave his lease or written note with the nearest justice of the peace, or with the minister of the parish in which the farm is situate, and the justice or minister, as the case may be, shall show the lease or note of the rent to the assessor when required.

No. V—Rules in respect of Deductions and Allowances

1. The following deductions and allowances shall be made under this Schedule:—

(a) The amount of the tenths and first fruits, duties, and fees on presentations paid by any ecclesiastical person within the year preceding the year of assessment:

(b) The amount paid for procurations and synodals by ecclesiastical persons on an average of seven years preceding the year of assessment:

(c) The amount expended during the year preceding the year of assessment on repairs of any collegiate church or chapel, or chancel of a church, or of any college or hall in any university of the United Kingdom, by any ecclesiastical or collegiate body, rector, vicar, or other person bound to repair the same:

(d) The amount paid for public local rates, taxes, and assessments charged in respect of a rentcharge under the Tithe Act, 1836, for the year of assessment, except where the owner of the rentcharge has been charged therefor under rule 7 of No. VII of this Schedule:

(e) The amount of any unredeemed land tax charged on lands, tenements, hereditaments, and heritages, under the Land Tax Act, 1797:

(f) The amount charged on lands, tenements, hereditaments, and heritages, by a public rate or assessment in respect of draining, fencing, or embanking:

(g) The amount expended by the landlord or owner of lands on an average of the twenty-one preceding years, in the making or repairing of sea walls or other embankments necessary for the preservation or protection of the lands against the encroachment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on the lands by a public rate or assessment:

. . . [86]

2. The foregoing allowances shall (unless the payments to which they relate, or any part thereof, be made by a tenant) be made from the assessment on the property concerned, save as is hereinafter provided.

3. The allowances granted under paragraphs (a), (b) and (c) of rule 1 may be granted to the body or person therein described in one sum, either by deduction from the assessment, if any, on such body or person, or by repayment, but any allowance made under rule 1 on account of charges payable in respect of tithe rentcharge shall be granted by repayment only.

4.—(1) Where it is shown to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law—

(a) charged with any public rates, taxes, or assessments which in England are by law a charge on the occupiers of lands; or

(b) charged with any public rates or taxes or other public burdens, the like whereof are not chargeable on lands in England,

the said Commissioners shall cause such relief to be given in respect of tax as is just and reasonable having regard to the additional burden on the landlord.

(2) Relief under this rule may be given in accordance with such regulations as the said Commissioners may prescribe, either by abatement from the assessment, or by repayment of tax.

5. The person entitled to any of the foregoing allowances which have not been made by way of deduction or abatement from the assessment and which may be made by repayment, may claim the allowance at any time within *six*[87] years after the expiration of the year of assessment, before the general commissioners of the division in which the property charged with the payments is situate.

6. The general commissioners on proof that the claimant is entitled to the allowance shall certify the particulars and amount thereof to the special commissioners, who shall issue an order for repayment.

7.—(1) Where tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect:—

(a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and

(b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

(i) *Where the owner is occupier or chargeable as landlord, or where a tenant is occupier and the landlord has undertaken to bear the cost of repairs, by a sum equal to the amount of the authorised reduction hereinafter mentioned; and*

(ii) *Where a tenant is occupier and has undertaken to bear the cost of repairs, by such a sum, not exceeding the amount of the authorised reduction, as may be necessary to reduce the amount of the assessment to the amount of rent payable by him:*

Provided that the amount by which an assessment is reduced shall not, in the case of an assessment exceeding the amount of forty pounds, be less than it would have been if the amount of the assessment had been forty pounds.[88]

(2) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth *below the rent*[88]

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[86] Proviso repealed: Act of 1930, s. 53 (8).

[87] Extended to six years, Finance Act, 1923, s. 30 (1)

[88] Paras. and words substituted and inserted, Finance Act, 1923, s. 28; with effect to April 5, 1947: Act of 1942, s. 27.

and in the case of any house or building (except a farmhouse or building included with lands in assessment) is *less than the rent by a sum greater than the authorised reduction which would be allowable if the assessment were on the amount of the rent*[88] after deducting from such rent any outgoing which should by law be deducted in making the assessment, this rule shall not apply.

(3)[88] The authorised reduction for the purposes of this Rule shall be—

(a) Where the amount of the assessment does not exceed forty pounds.	A sum equal to one-fourth part of the amount of the assessment.
(b) Where the amount of the assessment exceeds forty pounds but does not exceed one hundred pounds.	A sum equal to one-fifth part of the amount of the assessment.
(c) Where the amount of the assessment exceeds one hundred pounds.	Twenty pounds, together with a sum equal to one-sixth part of the amount by which the assessment exceeds one hundred pounds.

8.—(1) If the owner of any land or houses to which this rule applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted under this Schedule, and, in the case of houses, *the authorised reduction*,[89] he shall be entitled in addition to any reduction of the assessment for the purposes of collection, on making a claim for the purpose, to repayment of the amount of the tax on the excess.

(2) For the purposes of this rule, the term "maintenance" shall include the replacement of farmhouses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent; *and shall also include additions or improvements to farmhouses, farm buildings, or cottages, but only if no increased rent is payable in respect of the additions or improvements and in so far as they are made in order to comply with the provisions of any statute or the regulations or bye-laws of a local authority.*[89]

(3) *This rule shall apply to any land (inclusive of farmhouses and other buildings, if any) or house, the assessment on which is reduced for the purpose of collection:*

Provided that no repayment of tax shall be made under this rule in respect of the cost of maintenance, repairs, insurance or management, if or to such extent as that cost has been otherwise allowed as a deduction in computing income for the purposes of income tax.[89]

(4) In comparing, for the purpose of this rule, the cost of maintenance, repairs, insurance, and management of any land or houses with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses, as the case may be.

(5) All the provisions of *the Income Tax Acts which relate to claims for any allowance or deduction*,[91] or the proof to be given with respect to those claims, shall apply to claims for repayment under this rule and the proof to be given with respect to those claims:

Provided that if the owner of any land or house makes and delivers to the surveyor of any district in which the land or house is wholly or partly situate

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[88] See previous page.
[89] Words added, Act of 1924, s. 25.
[89] Para. substituted, Act of 1922, s. 25.
[91] Words substituted, Finance Act, 1920, s. 32, and Third Sched.

a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner is entitled under this rule shall be certified by the surveyor, and repayment shall thereupon be made in accordance with his certificate.

(6) In computing the five year average for the purposes of this rule, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the surveyor of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the tax in respect of which a claim for repayment is made is charged.

9.—(1) Where land has been demised at a reserved rent, without fine or other sum paid or contracted for in lieu of a reserved rent, and loss has been sustained on the growing crops or stock on the lands, or the lands or any part of them have been rendered incapable of cultivation for any year, by reason of flood or tempest, the general commissioners for the division in which the lands are situate, on proof to them that the owner has, in consideration of any such loss, allowed, or agreed to allow, to the tenant an abatement of the whole or any part of the rent reserved or payable for any year of the term, may in like proportion make an abatement in the assessment under this Schedule for the year for which the abatement of rent has been made, and discharge therefrom the corresponding proportion of tax.

(2) Where any such loss is sustained on lands in the occupation of the owner, the commissioners may, on proof of the loss, make the like abatement and discharge of tax under this Schedule as might have been made if the land had been demised to a tenant, and the owner had made such abatement of rent proportionate to the loss sustained as the general commissioners consider would or ought to have been made in respect of such loss.

10. A person who—

(a) makes any false claim for an abatement under rule 9; or

(b) is guilty of any fraud or contrivance in making any such claim, or obtaining any such abatement; or

(c) fraudulently or untruly declares the amount or value of such loss, or the amount or value of any abatement made or agreed to be made in the rent of lands occupied by him on account of such loss, with the intention of fraudulently obtaining any such abatement,

shall forfeit the sum of fifty pounds and treble the amount of tax charged on him in respect of the lands.

11. A person who—

(a) aids, abets, or assists a person charged with tax in making any such false or fraudulent claim; or

(b) fraudulently or untruly declares the amount or value of any abatement made, or agreed to be made, in the rent of any lands, or the amount or value of any loss, with intent fraudulently to obtain for himself, his tenant, or for the owner or tenant of any lands any such abatement as aforesaid,

shall forfeit the sum of one hundred pounds.

No. VI—Rules in respect of further Allowances

1. The following further allowances shall be made under this Schedule:—

(a) The amount of the tax charged on any college or hall in any university of the United Kingdom, in respect of the public buildings and offices belonging to the college or hall, so far as not occupied by any individual member thereof or by any person paying rent for the same:

(b) The amount expended on repairs of the public buildings and offices of any such college or hall, and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of the college or hall:

(c) The amount of the tax charged on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act, amounts to one hundred and fifty pounds or more, or by a person paying rent for the same:

(d) The amount expended on repairs of any such hospital, public school, or almshouse, and of the offices belonging thereto, and of the gardens, walks, and grounds used for the sustenance or recreation of the hospitallers, scholars and almsmen respectively, which are repaired and maintained by the funds of the hospital, public school or almshouse:

(e) The amount of the tax charged on any building being the property of any literary or scientific institution, and used solely for the purposes of that institution, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and so far as not occupied by an officer of the institution or by any person paying rent for the same.

2. The allowances under the foregoing rule shall be granted by the general commissioners for the division.

No. VII—Rules as to Persons chargeable

1. Save as in this Act provided in any particular case, tax under this Schedule shall be charged on and paid by the occupier for the time being.

2. Every person having the use of any lands or tenements shall be deemed to be the occupier thereof.

3. The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation:

Provided that—

(a) An occupier who quits occupation shall be liable for the tax payable in respect of the period up to the date of his quitting occupation, so far as such tax falls to be ultimately borne by him:

(b) Nothing in this Act shall extend to authorise the levying upon an occupier for the time being of any tax under this Schedule which ought to have been levied upon and ultimately borne by any former occupier of the lands, tenements or hereditaments, and nothing herein contained shall affect any remedy under this Act for the levying of any such tax or any portion thereof, from such former occupier.

4. Tax under this Schedule shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not, but if any house is or becomes unoccupied for the year or for part of the year of assessment, the tax shall not be levied thereon during the period while it is so unoccupied, and the general commissioners, on proof of the period during which the house was unoccupied, shall upon appeal discharge the tax in respect of that period.

5. If, after the making of an assessment, the lands are divided into two or more distinct occupations, the general commissioners, on the application of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned

shall be collected and levied in like manner as if it had been an original assessment.

6. In respect of any compositions, rents or other payments in lieu of tithes the commissioners may, if they think fit—

(a) charge the occupiers of the lands from which the tithes arise; or
(b) charge the respective persons liable to make any such payments; and
(c) direct notices to be delivered to any such persons respectively for the purpose of obtaining returns of any such payments, and the like provisions and penalties shall apply as in the case of statements to be delivered of the annual value of lands.

7.—(1) Where lands, tenements, or hereditaments are subject to a rentcharge under the Tithe Act, 1836, or to any other rentcharge in lieu of tithe, and the owner of such rentcharge makes a return thereof for the purpose of an assessment being made upon him, the commissioners may, if they think fit, charge him under this Schedule in respect of the rentcharge, deducting therefrom the public local rates, taxes, and assessments charged thereon in the preceding year.

(2) Where any such charge is made upon the owner of the rentcharge, the amount of the rentcharge shall be allowed as a deduction from the annual value in assessing the lands, tenements, and hereditaments upon which it is charged.

8.[98] The assessment and charge shall be made upon the landlord in respect of—

(a) any dwelling-house in the occupation of a tenant which, with the buildings or offices belonging thereto, and the land occupied therewith, is of less annual value than ten pounds; and
(b) any land and tenements which are let for a period less than one year; and
(c) any house or building let in different apartments or tenements, and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement:

Provided that in each of the above cases in default of payment by the landlord, the tax may be levied upon the occupier or occupiers respectively.

9.—(1) The landlord or immediate lessor of any lands, houses, or buildings may, if the general commissioners think fit, be assessed and charged as if he were the occupier thereof, for any year of assessment in which a request in writing to that effect is received from him and for subsequent years until he shall by notice in writing cancel such request.

(2) Any such request or notice shall be delivered personally or be sent by post to the clerk to the general commissioners on or before the thirty-first day of July in the year for which it is first to take effect.

(3) The tax so charged upon the landlord or immediate lessor may be recovered from him in the same manner as any other income tax is recoverable, but this provision shall not prejudice the right to recover the same, if necessary, by distraint upon the premises or property in respect of which the charge was made, in the same way as if the charge had been made upon the occupier for the time being.

10. Tax to be charged in respect of any house or tenement occupied by the accredited Minister of any foreign State shall be charged on and paid by the landlord or person immediately entitled to the rent of the house or tenement.

11. Tax to be charged in respect of any house, tenement, or apartment belonging to the Crown, in the occupation of any officer of the Crown, by right

[98] See Act of 1941, ss. 12, 15.

of his office or otherwise, except apartments in Royal palaces, shall be charged on and paid by the occupier on the annual value thereof.

12. Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof.

13.—(1) Any mortgagee or creditor in any heritable bond or wadset, in possession of the lands, tenements, hereditaments, or heritages mortgaged or secured if in actual occupation of the same, shall be assessed and charged as an occupier, and if not in actual occupation, shall be liable to the like deduction as any landlord.

(2) In any settlement of accounts between such mortgagee or other creditor and the mortgagor or debtor, tax payable on interest due in respect of the mortgage or debt shall be allowed as money received on account of interest.

No. VIII—Rules as to the right of persons by whom tax is paid to recoupment in certain cases

1. A tenant occupier of any lands, tenements, hereditaments or heritages who pays the tax shall be entitled to deduct and retain in respect of the rent payable to the landlord for the time being (all sums allowed by the commissioners being first deducted), an amount representing the rate or rates of tax in force during the period through which the said rent was accruing due for every twenty shillings thereof, the said deduction to be made out of the first payment thereafter made on account of rent, and any receiver on behalf of the Crown or other person receiving the rent shall, *on production of the receipt for the payment of the tax*,[93] allow the deduction on receipt of the residue of the rent:

Provided that in Scotland the said deduction from any rent due for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that a tenant or occupier shall not be entitled to deduct out of the rent any greater sum than the amount of tax charged in respect of such property as aforesaid, and actually paid by him.

2. A tenant *to whom a deduction is to be allowed under the preceding rule*[93a] shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid as rent.

3. An occupier of lands charged on the amount of any composition, rent, or payment for tithes arising therefrom who pays the tax shall on payment thereof be entitled to make the like deduction from any such composition, rent, or payment.

4.[93b]—(1) Where any lands, tenements, hereditaments, or heritages are subject to the payment of any annual sum, whether payable half-yearly or at any shorter or more distant period, a landlord, owner or proprietor who has been charged to tax under this Schedule or from whom tax is deductible under this rule or rule 1 or rule 3, shall be entitled on making such payment to deduct and retain thereout so much of the said tax as represents the rate or rates of income tax in force during the period through which the said payment was accruing due, for every twenty shillings thereof (the just proportion of any sums allowed by the commissioners being first deducted), and every receiver on behalf of the Crown, and every person to whom such payment is made shall, on receipt of the residue thereof, and without any charge for so doing, allow the deduction:

Provided that in Scotland the said deduction from any such payment due

[93] Amendments made, Act of 1924, s. 26. [93a] See Act of 1940, s. 17.

for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that no such person as aforesaid who is also a tenant or the occupier of the lands, tenements, hereditaments, or heritages, shall be entitled to deduct out of any rent any greater sum than the amount of tax charged in respect of any such property and actually paid by him.

(2) In this rule "annual sum" means any yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise), fee farm rent, rent service, quit rent, feu duty, teind duty, stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments, or heritages.

5. The landlord, owner or proprietor shall be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid.

6. Where under any Act passed before the twenty-eighth day of June, eighteen hundred and fifty-three, and in Ireland, under the Landed Property Improvement (Ireland) Act, 1847, or any Acts amending the same, an advance of public money to promote the improvement of lands has been made by way of loan, and the repayment thereof has been secured by a rentcharge upon the lands to be paid for a term of years, by which the principal sum advanced will eventually be repaid with interest, the person paying any such rentcharge may deduct and retain thereout so much of the tax under this Schedule charged in respect of the lands, as represents the tax on one-third, and no more, of the amount payable at the rate or rates of tax in force during the period through which the payment was accruing due; and the collectors and receivers of such rentcharges shall allow such deduction upon receipt of the residue of such rentcharge then due.

7. A tenant occupier for the time being of any lands, tenements or hereditaments, who has been required to pay, and has paid, any sums charged in respect thereof under this Schedule which, under the provisions of this Act, ought to have been or ought to be paid by a former tenant or occupier, may deduct and retain out of any subsequent payment of rent to his landlord, the sum, or any part thereof which ought to have been or ought to be so paid.

8. Where under rule 8 of No. VII tax has been charged upon a landlord in respect of any premises mentioned in paragraph (a) or (b) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier, the tax may be deducted and shall be allowed out of the next payment on account of rent.

9.[94] Where under rule 8 of No. VII tax has been charged upon a landlord in respect of any premises mentioned in paragraph (c) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier or occupiers, the tax may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

10. If for the purpose of avoiding distraint upon any premises or property under paragraph (3) of rule 9 of No. VII the occupier pays the tax, the amount thereof may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

11. As between the owner and a mortgagee of his property or any person having a charge thereon or entitled to any ground rent, rentcharge, annuity, or other annual sum payable thereout, the owner's right of deduction under these rules in respect of tax shall not be affected by any relief afforded under rule 7 of No. V.

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[94] See Act of 1941, ss. 12, 15, and First Sched., Part III.

No. IX—Rules as to Place of Charge

1. All properties shall be assessed and charged in the parish where they are situate, and not elsewhere, except as otherwise provided in the following rules.[95]

. . . . . .

5. In the case of all lands the occupier, whether owner or tenant, or tenant under different owners, and whether the lands are situate in the same or in different parishes or divisions, shall return a statement in each parish in which any part of the lands is situate, and give a separate estimate of the lands in his occupation belonging to different owners, and if any such occupier wilfully omits to deliver any such statement in any parish, although he may not reside therein, he shall be charged for the lands omitted at treble the rate of tax in addition to any penalty for which he is liable.

6. Lands held under the same demise, or occupied by the same person as owner, if they are wholly within the same division though situate in different parishes, may, if the commissioners are satisfied that the proportion in each parish, in respect of quantity, rent, or value, cannot be ascertained, be assessed and charged in either parish.

7. In any such case if any lands extend into different divisions the assessment and charge shall be made in the division where the occupier resides.

8. Where a dwelling-house or any premises occupied therewith is situate in two or more parishes, the assessment and charge thereon shall be made in such one of those parishes only as the surveyor deems most expedient, and the surveyor shall notify to the commissioners acting for each of the said parishes the parish selected by him.

. . . . . .

Schedule B

Tax under Schedule B shall be charged in respect of the occupation of all lands, tenements, hereditaments, and heritages in the United Kingdom for every twenty shillings of the assessable value thereof estimated in accordance with the rules of this Schedule.

In this Act the expression "assessable value" *means in relation to tax under this Schedule an amount equal to three times the annual value*[96] of the lands, tenements, hereditaments, or heritages, or, in any case in which it is proved to the satisfaction of the commissioners concerned that any person occupying any lands and assessed to tax in respect thereof is not occupying those lands for the purpose of husbandry only, or mainly for those purposes, and the Board of Agriculture and Fisheries on a reference to the Board by the Commissioners of Inland Revenue do not certify that the use of the lands by the occupier thereof for a purpose other than the purpose of husbandry is unreasonable, an amount equal to *one-third of*[97] the annual value.

The expression "Board of Agriculture and Fisheries" means in the application of this Act to Scotland, the Board of Agriculture for Scotland, and in the application of this Act to Ireland, means the Department of Agriculture and Technical Instruction for Ireland.

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[95] Rules 2, 3, 4 and 9 are superseded by the transfer to Sched. D of properties formerly in Sched. A, Nos. II and III, by Act of 1926, s. 28.

[96] Words substituted, Act of 1942, s. 28 (2).

[97] Words inserted, Finance Act, 1922, s. 23 (1).

RULES APPLICABLE TO SCHEDULE B

Rules

1. Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule A on all the properties in this Act directed to be charged to the said tax according to the general rule of No. I of Schedule A:

Provided that there shall not be charged under this Schedule—

(a) any dwelling-house, or the domestic offices thereunto belonging, unless occupied, by virtue of one and the same demise, together with a farm of lands, or with a farm of tithes, for the purpose of farming the same; or

(b) any warehouse or other building occupied for the purpose of carrying on a trade or profession.

2. The rules of No. IV of Schedule A shall apply with respect to estimating the annual value of land under this Schedule, subject to the following modifications:—

(a) Where any tenant of land or tenements is subject to an agreement to pay or satisfy any rates, taxes, or assessments which are by law chargeable on or payable by the landlord, the amount thereof bona fide paid by the tenant in and for the year preceding the year of assessment, shall, in making the estimate, if the lands have been let within the seven preceding years be added to the rent reserved; if the lands or tenements were not let within the said period the estimate shall be made according to the general rule of No. I of Schedule A, with the like addition of the amount of any such payment:

(b) In the case mentioned in rule 11 of the said No. IV, the annual value shall be taken to be the rackrent at which the land could have been let by the year at the commencement of the demise as ascertained in accordance with this Act.

3. Rules 9, 10, and 11 of No. V of Schedule A, relating to relief in the case of losses caused by flood or tempest, shall apply in the case of this Schedule as in the case of Schedule A, and as respects land the proprietor of which is shown to the satisfaction of the general commissioners to be an infant, idiot, or lunatic, or to be otherwise incapable of consenting to an abatement of the rent, an abatement and discharge of tax under this Schedule may be allowed by the general commissioners on proof to them of the loss in respect of the abatement of rent which in their opinion ought to have been made.

4. Rules 1, 2, 3, 4, and 5 of No. VII of Schedule A, relating to the person chargeable, shall apply in the case of this Schedule as they apply in the case of Schedule A.

5.[98]—(1) Any person occupying lands for the purposes of husbandry only may elect to be assessed and charged under Schedule D, and in accordance with the provisions and rules applicable thereto, instead of under this Schedule.

(2) The election of any such person shall be signified by notice in writing delivered personally or sent by post in a registered letter to the surveyor for the district within two months after the commencement of the year of assessment; and from and after the receipt of the notice the charge upon him for that year shall be under Schedule D, and the profits or gains arising to him from the occupation of the lands shall for all purposes be deemed to be profits or gains of a trade chargeable under that Schedule.

6. If a person who occupies, either as owner or otherwise, any lands for the purposes of husbandry only, shows at the end of any year of assessment to the satisfaction of the general commissioners that the profits or gains arising from that occupation during that year fell short of the assessable value of the lands

[98] Rule 5 now applies only in relation to woodlands, according to rule 7: Act of 1942, s. 28 (3)

under this Schedule, the income arising from that occupation shall be taken at the actual amount of those profits or gains, and if the whole of the tax has been paid, the amount overpaid shall be certified and repaid in like manner as tax is repaid under rule 6 of No. V of Schedule A.

7. Any person occupying woodlands who proves to the satisfaction of the general commissioners or of the special commissioners that those woodlands are managed by him on a commercial basis and with a view to the realisation of profits, may elect to be assessed and charged to tax in respect of those woodlands under Schedule D instead of under this Schedule in the same manner as a person occupying lands for the purposes of husbandry only, and rule 5 shall apply accordingly, subject as follows:—

(a) Any such election shall extend to all woodlands so managed on the same estate, but woodlands which are or have been planted or replanted since the nineteenth day of July nineteen hundred and sixteen shall be treated for this purpose as being woodlands on a separate estate, if the person occupying those woodlands gives notice to the general or special commissioners within *ten years*[oo] after the time when they are so planted or replanted; and

(b) The election shall have effect, not only as respects the year of assessment, but also as respects all future years of assessment, so long as the woodlands are occupied by the person making the election:

(c) Any application to prove the aforsaid facts in any year in respect of the same woodlands must be made either to the general commissioners or to the special commissioners, and not to both.

8. . . .[ooo]

Schedule C

Tax under Schedule C shall be charged in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable out of any public revenue, for every twenty shillings of the annual amount thereof.

Rules applicable to Schedule C

General Rules

1. Tax under this Schedule—

(a) shall extend to all profits arising from interest, public annuities, dividends and shares of annuities payable in the United Kingdom out of any public revenue in the United Kingdom or elsewhere, in any year of assessment; and

(b) shall be charged by the commissioners designated for that purpose by this Act; and

(c) shall be paid by the persons and bodies of persons respectively intrusted with payment, on behalf of the persons entitled thereto.

2. No tax shall be chargeable in respect of—

(a) The stock, dividends or interest transferred to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners in pursuance of any Act of Parliament, but the Bank of England shall transmit to the special commissioners an account of the total amount thereof:

[oo] Words substituted, Finance Act, 1923, s. 23 (2).

[ooo] Repealed, Act of 1941, s. 52, and 3rd Sched.; see definition of "market garden land" in s. 19 (2).

(b) The stock, dividends or interest belonging to the Crown in whatever name they may stand in the books of the Bank of England:

(c) The stock, dividends or interest of any accredited minister of any foreign State resident in the United Kingdom:

Provided that if the same stand in the name of a trustee, the property therein of any such minister shall be proved by the trustee to the special commissioners:

(d) The interest or dividends on any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners of Inland Revenue that the person owning the securities and entitled to the interest or dividends is not resident[1] in the United Kingdom; but, save as provided by this Act, no allowance shall be given or repayment be made in respect of the tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom:

Provided that where the securities of a foreign State or British possession are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall, for the purposes of this provision, be deemed to be the person owning the securities.

The aforesaid relief may be given by the Commissioners of Inland Revenue either by way of allowance or repayment on a claim being made to them for the purpose.

3. Any bank carrying on a bona fide banking business in the United Kingdom shall be relieved, by repayment or otherwise, from tax under this Schedule in respect of the interest on any securities which the bank proves to the satisfaction of the special commissioners to represent subscriptions by the bank to any Government loan issued for the purposes of the present war either before or after the passing of this Act, and the bank shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I of Schedule D.

Rules as to interest, etc., payable out of public revenue to or through the Bank of England or the Bank of Ireland, or by the National Debt Commissioners.

1. The Bank of England and the Bank of Ireland as respects any interest, annuities, dividends and shares of annuities and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and intrusted to them for payment and distribution, and the National Debt Commissioners as respects interest, annuities and dividends payable by them or of which they have the distribution, shall, when any payment become due, deliver to the commissioners appointed to assess and charge the tax thereon true accounts in books provided for the purpose, of—

(a) the amounts of the interest, annuities, dividends, or shares of annuities and profits attached thereto payable to the Bank;

(b) all interest, annuities, dividends and shares of annuities intrusted to the Bank or to the National Debt Commissioners for payment to the persons entitled thereto; and

(c) the amount of tax chargeable thereon at the rate in force at the time of payment without any other deduction than is allowed by this Act.

[1] As to appeal, see Act of 1924, s. 27.

2. The aforesaid accounts shall distinguish the separate account of each person.

3. The appropriate commissioners shall assess the tax chargeable on the accounts delivered to the best of their judgment and belief, and deliver the assessment books, signed by them, to the special commissioners.

4. The special commissioners shall cause to be made out two certificates showing the total amount of tax, the total amounts of the interest, annuities, dividends, and shares of annuities and profits attached thereto charged with tax, and the description of the persons or bodies of persons to whom the same are payable, or who have the distribution or are intrusted with the payment thereof.

5. One certificate shall be transmitted to the respective commissioners whose duty it is to make the assessments and the other to the Commissioners of Inland Revenue.

6. The Bank of England and the Bank of Ireland shall set apart the tax in respect of the amounts payable to them, and the said Banks and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the tax for the purposes of this Act.

7. The retaining of the amount shall be deemed a payment of the tax by the persons entitled to the interest, annuities, dividends, or shares of annuities, and shall be allowed by them on receipt of the residue thereof, and the Bank of England, the Bank of Ireland, and the National Debt Commissioners respectively shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

8. Money so set apart or retained and the amount of any tax charged on the trading profits of either Bank, shall be paid into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and every such payment shall be accompanied with a certificate, under the hands of two or more of the commissioners who make the assessment, of the amount of the assessment under which the payment is made.

9. Except as otherwise provided in any other enactments in force at the commencement of this Act, no assessment, charge or deduction of tax under these rules shall be made where any half-yearly payment in respect of interest, annuities, dividends, or shares of annuities does not exceed fifty shillings, but such interest, annuities, dividends or shares of annuities shall be assessed and charged under Case III of Schedule D.

10. No deduction of tax under these rules shall be made from any dividends in respect of which such certificate as is mentioned in section twenty-eight of the Charitable Trusts (Amendment) Act, 1855, has been given to the Bank of England.

Rules as to interest, etc., with the payment of which persons other than the Bank of England, the Bank of Ireland and the National Debt Commissioners are intrusted.

1. Every person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) who is intrusted with the payment of any dividends which are payable *out of the public revenue of Northern Ireland, or which are payable*[1] to any persons in the United Kingdom, out of any public revenue other than that of the United Kingdom *or of Northern Ireland*[1] shall, within one month after being so required by notice published in the Gazette, deliver to the Commissioners of Inland Revenue an account in writing, giving his name and residence, and a description of the dividends intrusted to him for payment, and shall also, on demand by the inspector authorised for that purpose by the Commissioners of Inland Revenue, deliver

[1] Words inserted, Act of 1926, s. 24.

to him, for the use of the special commissioners, true and perfect accounts of the amount of all such dividends.

2. The special commissioners shall have all necessary powers in relation to the examining, auditing, checking and clearing the books and accounts of dividends delivered under the authority of this Act, and shall assess and charge the dividends at the rate of tax in force at the time of payment, but reduced by the amount of the exemptions (if any) allowed by them, and shall give notice of the amount so assessed and charged to the person intrusted with payment.

3. The person intrusted with payment shall out of the moneys in his hands pay the tax on the dividends on behalf of the persons entitled thereto, and shall be acquitted in respect of all such payments, and the provisions of this Act shall apply as in the case of dividends payable as aforesaid out of the public revenue of the United Kingdom.

4. The person intrusted with payment shall pay the tax into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and in default of payment it shall be recovered from him in the same manner as other income tax assessed and charged upon him may be recovered.

5. A person intrusted with payment who does all such things as are necessary to enable the tax to be assessed and paid shall receive as remuneration an allowance, to be calculated by reference to the amount of the dividends paid from which tax has been deducted, and to be fixed by the Treasury at a rate not being less than thirteen shillings and sixpence for every thousand pounds of that amount:

Provided that this rule shall not apply to any person intrusted with the payment of dividends payable out of the public revenue of Northern Ireland.[3]

6. A person intrusted with payment who neglects or refuses to deliver any such account as required by those rules shall forfeit the sum of one hundred pounds over and above the tax chargeable on any such dividends.

7. . . .[4]

8. Nothing in these rules shall impose on any banker or other person acting as a banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.

9. In these rules the expression "dividends" includes interest, annuities, dividends, and shares of annuities, and the expressions "coupons" and "coupons for any dividends" include warrants for or bills of exchange purporting to be drawn or made in payment of any dividends.

Rules as to interest, etc., payable out of public revenue by any public department.

1. Interest, annuities, dividends and shares of annuities payable out of any public revenue by any public office or department of the Crown shall be charged under this Schedule by the commissioners for offices in the said public office or department.

2. The said commissioners shall exercise the like powers and duties as are possessed by the commissioners empowered to charge interest, annuities, dividends, and shares of annuities payable out of the public revenue in other cases, and shall appoint assessors and collectors from the officers in their office or department entrusted with the payment thereof.

3. The said assessors and collectors shall, when any such payments are made as aforesaid, compute the tax thereon and certify the same to the proper officer for payment, who shall retain the tax and pay the same into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland.

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[3] Words inserted, Act of 1924, s. 24.

[4] Repealed, Act of 1933, Fifth Sched.

Schedule D

1. Tax under this Schedule shall be charged in respect of—

(a) The annual profits or gains arising or accruing—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and

(ii) to any person residing in the United Kingdom from any trade, profession, employment, or vocation whether the same be respectively carried on in the United Kingdom or elsewhere; and

(iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession, employment, or vocation exercised within the United Kingdom; and

(b) All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C or E, and not specially exempted from tax;

in each case for every twenty shillings of the annual amount of the profits or gains.

2. Tax under this Schedule shall be charged under the following cases respectively; that is to say,—

Case I—Tax in respect of any trade not contained in any other Schedule;

Case II—Tax in respect of any profession, employment, or vocation not contained in any other Schedule;

Case III—Tax in respect of profits of an uncertain value and of other income described in the rules applicable to this Case;

Case IV—Tax in respect of income arising from securities out of the United Kingdom, except such income as is charged under Schedule C;

Case V—Tax in respect of income arising from possessions out of the United Kingdom;

Case VI—Tax in respect of any annual profits or gains not falling under any of the foregoing Cases, and not charged by virtue of any other Schedule;

and subject to and in accordance with the rules applicable to the said Cases respectively.

Rules applicable to Schedule D

Rule applicable to Case I

The tax shall extend to every trade carried on in the United Kingdom or elsewhere, . . .,[4] and shall be computed on the full amount of the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the fifth day of April preceding the year of assessment.

Rule applicable to Case II

The tax shall extend to every employment by retainer in any character whatever, whether such retainer shall be annual or for a longer or shorter

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[4] Words repealed, Act of 1926, s. 27, and Fifth Sched., Part I; and see s. 29 (1).

period, and to all profits and earnings of whatever value arising from employments, and shall be computed on the full amount of the balance of the profits, gains and emoluments of the professions, employments or vocations upon a fair and just average of three years ending as in Case I.

Rules applicable to Cases I and II

1.—(1) The tax shall be charged without any other deduction than is by this Act allowed.

(2) Where the trade, profession, employment, or vocation has been set up and commenced within the *year preceding the year of assessment*,[6] the computation shall be made on . . .[6] the profits or gains for one year from the period of the first setting up of the same, and where it has been set up and commenced within the year of assessment, the computation shall be made according to the rules applicable to Case VI.

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3. In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation:

(b) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession, employment or vocation:

(c) the rent or annual value of any dwelling-house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession: Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the commissioners, and shall not, *unless in any particular case the commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted, exceed two-thirds*[8] of the annual value or of the rent bona fide paid for the said dwelling-house or offices:

(d) any sum expended for repairs of premises occupied, or for the supply, repairs, or alterations of any implements, utensils, or articles employed for the purposes of the trade, profession, employment or vocation, beyond the sum *actually*[8] expended for those purposes . . .:[9]

(e) any loss not connected with or arising out of the trade, profession, employment or vocation:

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in such trade, profession, employment or vocation:

(g) any capital employed in improvements of premises occupied for the purposes of the trade, profession, employment or vocation:

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest:

(i) any debts, except bad debts proved to be such to the satisfaction of the commissioners and doubtful debts to the extent that they are

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[6] Words inserted and omitted, Act of 1926, s. 36, and Fourth Sched.

[7] Rule 2 repealed, Employments Act, 1943, s. 5 (3).

[8] Words substituted, Finance Act, 1921, s. 31.

[9] Words substituted and words omitted, Act of 1926, s. 36, and Fourth Sched.

respectively estimated to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof:

(j) any average loss beyond the actual amount of loss after adjustment:

(k) any sum recoverable under an insurance or contract of indemnity:

(l) any annual interest, or any annuity, or other annual payment payable out of the profits or gains:

(m) any royalty or other sum paid in respect of the user of a patent.

4.—(1) Where any person has paid excess profits duty, the amount so paid shall be allowed as a deduction in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received payment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received:

Provided that any excess profits duty which becomes chargeable by virtue only of the provisions of the Finance Act, 1918, relating to profits arising from the sale of trading stock otherwise than in the ordinary course of trade, shall not be deemed to be excess profits duty for the purposes of this rule.

(2) The payment of excess profits duty shall not be deemed to be a specific cause for the purpose of rule 3 of the miscellaneous rules applicable to this Schedule.

(3) Where in any year of assessment the profits or gains from which a deduction may be made under this rule come into computation, but owing to the time at which the amount of the excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which that tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

(4) This rule shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that the relief to the taxpayer under the last preceding paragraph of this rule shall in all cases be given by means of repayment and not by deduction.

(5) Any excess profits duty and any munitions Exchequer payments which under the provisions contained in section forty-eight of the Finance Act, 1916 (which provides for the adjustments of excess profits duty and munitions Exchequer payments in the case of controlled establishments), are remitted for the purpose of collection, shall not be deemed to have been paid for the purposes of this rule.

(6) The expression "munitions Exchequer payments" means any sums paid or payable into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

5.—(1) The computation of tax shall be made exclusive of the *annual value of*[10] lands, tenements, hereditaments, or heritages occupied for the purpose of the trade or profession, *and separately assessed and charged under Schedule A*:[10]

. . .[10] where any lands, tenements, hereditaments, or other premises of whatsoever description used for the purpose of any trade, profession, employment, or vocation, are situate outside the United Kingdom, no deduction or set-off shall, in estimating the amount of annual profits or

[10] Words substituted, inserted and omitted, Act of 1926, s. 36, and Fourth Sched.

gains arising or accruing from that trade, profession, employment, or vocation, in any manner be allowed on account or in respect of the annual value of those premises.

(2) Where, in estimating the amount of annual profits or gains arising or accruing from any trade, profession, employment, or vocation and chargeable to tax under this Schedule, any sum is deducted on account of the annual value of the *lands, tenements, hereditaments and heritages*[10] used for the purpose of such trade, profession, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the *lands, tenements, hereditaments and heritages*[10] for the purpose of tax under Schedule A as reduced for the purpose of collection:

. . .[11]

6.—(1) In charging the profits or gains of a trade under this Schedule, such deduction may be allowed as the commissioners having jurisdiction in the matter may consider just and reasonable, as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the trade and belonging to the person by whom it is carried on.[12]

(2) Where machinery or plant is let to the person by whom the trade is carried on, on the terms of his being bound to maintain the same and deliver it over in good condition at the end of the lease, the machinery or plant shall be deemed to belong to that person for the purpose of this rule.[13]

Provided that this paragraph shall not apply to any machinery or plant unless the Commissioners having jurisdiction in the matter are satisfied, having regard to all the relevant circumstances of the case, that the burden of the wear and tear of the machinery and plant will in fact fall directly on that person.[13]

(3) Where full effect cannot be given to any such deduction in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year, and deemed to be part of that deduction, or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) Any claim in respect of the aforesaid deduction shall be included in the annual statement required to be delivered under this Act of the profits or gains of the trade for which the machinery or plant is used, and the additional commissioners, in assessing those profits or gains, shall make such allowance in respect thereof as they think just and reasonable.

(5) Where machinery or plant is let upon such terms that the burden of maintaining and restoring it falls upon the lessor, he shall be entitled, on presenting a claim to the general or special commissioners, to have repaid to him such a portion of the sum assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the tax upon an amount which the commissioners consider just and reasonable as representing the diminished value by reason of wear and tear of the machinery or plant during the year.

No such claim shall be allowed unless made within twelve months after the expiration of the year of assessment.

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[11] Proviso repealed, Act of 1927, Sixth Sched., Part I.
[12] See Act of 1922, s. 18; Income Tax Act, 1945, ss. 16, 17, 23, 24, 65, 66, 69.
[13] Proviso inserted, Act of 1940, s. 22.

(6) No deduction for wear and tear, or repayment on account of any such deduction, shall be allowed for any year if the deduction, when added to the deductions allowed on that account for any previous years to the person by whom the trade is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or re-instatement.

(7) Where an application is made to the Commissioners of Inland Revenue for the alteration of the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious, shall refer the case to the Board of Referees, and that Board shall, if they are satisfied that the application is made by or on behalf of any considerable number of persons engaged in any class of trade or business, take the application into their consideration, and determine the deduction to be allowed.

In this rule the expression "Board of Referees" means any Board of Referees appointed for the purpose of Part III of the Finance (No. 2) Act, 1915, or, if there is no such Board, a Board of Referees to be appointed for the purpose of this rule by the Treasury.

7. In estimating the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade chargeable under this Schedule there shall be allowed to be deducted as expenses incurred in any year so much of any amount expended in that year in replacing any plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery replaced after deducting from that cost the total amount of any allowances which have at any time been made in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery, and any sum realised by the sale of that machinery or plant.[13a]

8. . . .[14]

9.—(1) If a person charged under this Schedule ceases within the year of assessment to carry on the trade, profession or vocation in respect of which the assessment is made, and is succeeded therein by another person, the surveyor shall, within four months from the fifth day of April next after any such change, certify to the general commissioners for the division in which the assessment is made the particulars thereof, and the full name and residence of the person charged and of his successor and the date of the change, if the same be known to the surveyor.

(2) On receipt of the certificate the commissioners shall cause notice to be given to the respective persons of a meeting of the commissioners to consider it, and after examination of the said persons, if they attend, or on other satisfactory proof of the facts, the commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade, profession, or vocation, and relieving the person originally charged from a like amount.

(3) The determination of the commissioners on any such certificate shall be final, and the sum apportioned to each such person shall be recoverable from him in like manner as if he had been charged under the original assessment.

(4) If either of the said persons has paid in respect of an assessment so certified more than the proportion which appears by the determination of the commissioners to be chargeable on him, the amount overpaid shall, when recovered from the person liable, be paid to the person by whom the overpayment was made.

10.—(1) Where a trade or profession is carried on by two or more persons jointly, the tax in respect thereof shall be computed and stated jointly and in

[13a] See Income Tax Act, 1945, ss. 16 (4), 18 (2), 24, 26 (4), 29 (1).
[14] Repealed, Act of 1926, s. 37, and Fourth Sched., Part I.

one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

(2) The precedent partner, that is to say, the partner who, being resident in the United Kingdom—

(i) is first named in the agreement of partnership; or

(ii) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or

(iii) is the precedent acting partner, if the person named with precedence is not an acting partner;

shall make and deliver a statement of the profits or gains of such trade or profession, on behalf of himself and the other partners, and declare therein the names and residences of the other partners, under the penalty prescribed by this Act for default in delivering a statement.

(3) Where no partner is resident in the United Kingdom the statement shall be made and delivered by the agent, manager, or factor of the firm resident in the United Kingdom.

(4) Any other partner may, if a statement has been delivered as aforesaid, notify the fact that he is a partner together with his name and place of abode, without returning the amount of tax payable in respect of the partnership, but the respective commissioners may, if they think fit, require from every partner a like statement and the like information and evidence, as they are entitled to require from the precedent partner.

11.[15]—(1) If at any time after the fifth day of April, nineteen hundred and twenty-eight, a change occurs in a partnership of persons engaged in any trade, profession or vocation, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein, or a person who until that time was engaged in any trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or vocation after that time shall, notwithstanding the change, be computed according to the profits or gains of the trade, profession or vocation during the period prescribed by the Income Tax Acts:

Provided that, where all the persons who were engaged in the trade, profession or vocation both immediately before and immediately after the change require, by notice signed by all of them, or, in the case of a deceased person, by his legal representatives, and sent to the surveyor within *twelve*[16] months after the change took place, that the tax payable for all years of assessment shall be computed as if the trade, profession or vocation had been discontinued at the date of the change, and a new trade, profession or vocation had been then set up or commenced, and that the tax so computed for any year shall be charged on and paid by such of them as would have been charged if such discontinuance and setting up or commencement had actually taken place, the tax shall be computed, charged, collected and paid accordingly.

(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assess-

[15] New rule substituted, Act of 1926, s. 32 (1); and see Income Tax Act, 1945, s. 60.
[16] Act of 1930, s. 16.

ment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership.

(3) In the case of the death of a person who, if he had not died, would, under the provisions of this Rule, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

12.—(1) Where any trade or business is carried on by two or more persons in partnership, and the control and management of such trade or business is situate abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the said partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom and that some of the trading operations of the said partnership are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situate abroad consists of trading operations within the United Kingdom, the said firm shall be chargeable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom:

Provided that for the purpose of charging any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

13. A person who carries on, either solely or in partnership, two or more distinct trades[17] the profits of which are chargeable under the rules of this Schedule, may deduct from or set off against the profits as computed under this Act in respect of one or more such trades, the loss so computed sustained in any other such trade, and may make separate statements as to each such trade.

14. Any bank which has obtained relief from tax under Schedule C by reason of the provisions of rule 3 of the general rules applicable to Schedule C in respect of the interest on any securities representing subscriptions of the bank to a war loan shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I of this Schedule.

15.—(1) Where an assurance company carries on life assurance business in conjunction with assurance business of any other class, the life assurance business of the company shall for the purposes of this Act be treated as a separate business from any other class of business carried on by the company.

(2) In ascertaining whether an assurance company has sustained a loss in respect of its life assurance business for the purpose of setting off such loss against the profits of any other business carried on by the company, or for the purpose of obtaining an adjustment of its liability by reference to the loss and to the aggregate amount of its income under the provisions contained in this Act, any income of the company derived from the investments of its life assurance fund shall be treated as part of the profits of the company acquired in that business.

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[17] References to trade include reference to profession or vocation: Act of 1941, s. 30.

16. Every statement of profits to be charged under this Schedule which is made by any person—

(i) on his own account; or

(ii) on account of some other person for whom he is chargeable, or who is chargeable in his name,

shall include every source of income so chargeable, and a person shall be chargeable in respect of the whole of the tax so chargeable in one and the same division and by the same commissioners:

Provided that where the same person is engaged in different partnerships or in different trades in different places, a separate assessment and charge shall be made in respect of each concern at the place where, if singly carried on, it would be assessed and charged under the provisions of this Act.

17. Where a person delivers a statement of profits as aforesaid on behalf of some other person, or of a body of persons the statement shall be delivered in the division where the person delivering the statement or the body of persons respectively would be assessable and chargeable if acting on his or their own behalf.

Rules applicable to Case III

1. The tax shall extend to—

(a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods;

(b) all discounts;

(c) profits on securities bearing interest payable out of the public revenue other than such as are charged under Schedule C;

(d) interest, annuities, dividends and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed fifty shillings and are not chargeable under Schedule C;

(e) interest paid or credited in full without deduction of tax by any savings bank to any depositor;

(f) interest on any Exchequer bonds issued under the authority of the Treasury during the continuance of the present war and a period of six months thereafter and on any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts, in cases where such interest is paid without deduction of tax.

2.—(1) The tax shall, subject as hereinafter provided, be computed—

(a) as respects the year of assessment in which the profits or income first arise, on the full amount of the profits or income arising within that year; and

(b) as respects subsequent years of assessment, on the full amount of the profits or income arising within the year preceding the year of assessment:

Provided that—

(i) where the profits or income first arose on some day in the year preceding the year of assessment other than the sixth day of April, the computation shall be made on the profits or income of the year of assessment; and

(ii) where the profits or income first arose on the sixth day of April in the year preceding the year of assessment, or on some

day in the year next before the year preceding the year of assessment, other than the sixth day of April, the person charged shall be entitled, on giving notice in writing to the surveyor of taxes at any time within twelve months after the end of the year of assessment, to be charged on the amount of the profits or income of that year, and if the tax charged has been paid, any amount overpaid shall be repaid.

(2) Tax shall be paid on the amount computed as aforesaid without any deduction.[18]

3.—(1) Where an assurance company not having its head office in the United Kingdom carries on life assurance business through any branch or agency in the United Kingdom, any income of the company from the investments of its life assurance fund (excluding the annuity fund, if any), wherever received, shall, to the extent provided in this rule, be deemed to be profits comprised in this Schedule and shall be charged under this Case.

(2) Such portion only of the income from the investments of the life assurance fund for the year preceding the year of assessment shall be so charged as bears the same proportion to the total income from those investments as the amount of premiums received in that year from policy holders resident in the United Kingdom and from policy holders resident abroad whose proposals were made to the company at or through its office or agency in the United Kingdom bears to the total amount of the premiums received by the company:

Provided that in the case of an assurance company having its head office in any British possession, the Commissioners of Inland Revenue may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the United Kingdom.

(3) Every such charge shall be made by the special commissioners as though the company under the provisions of this Act had required the proceedings relating to the charge to be had and taken before those commissioners.

(4) Where a company has already been charged to tax, by deduction or otherwise, in respect of its life assurance business, to an amount equal to or exceeding the charge under this rule, no further charge shall be made under this rule, and where a company has already been so charged, but to a less amount, the charge shall be proportionately reduced.

4. If the commissioners find that lands which have been charged under Schedule B on the assessable value, and which are occupied by a dealer in cattle or a dealer in or a seller of milk, are insufficient for the keep of the cattle brought on to the lands, so that the assessable value affords no just estimate of the profits, they may require a statement of the profits to be delivered, and charge such further sum thereon as, together with the charge under Schedule B, will make up the full sum wherewith the dealer or seller ought to be charged in respect of the like amount of profits charged according to rule 2 of the rules applicable to this Case.

Rules applicable to Case IV

1. The tax in respect of income arising from securities in any place out of the United Kingdom shall be computed on the full amount thereof . . . , whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom, to the same deductions and allowances as if it had been so received, and to the deduction, where such a deduction cannot be made under any other

[18] Rules substituted, Finance Act, 1922, s. 17.

provision of this Act, of any sum which has been paid in respect of income tax in the place where the income has arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom, and the provisions of this Act (including those relating to the delivery of statements) shall apply accordingly.

2. The foregoing rule shall not apply—

(a) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to income arising from such securities as aforesaid which form part of the investments of the foreign life assurance fund of an assurance company.

The tax in any such case shall be computed on the full amount, so far as the same can be computed, of the sums which have been . . .[18a] received in the United Kingdom . . . without any deduction or abatement.

Rules applicable to Case V

1. The tax in respect of *income arising from possessions outside the United Kingdom other than income which—*

(a) is immediately derived by a person from the carrying on by him of any trade, profession or vocation either solely or in partnership; or

(b) arises from any office, employment or pension,[19]

shall be computed on the full amount thereof . . .[18a] whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as are provided in rule 1 of the rules applicable to Case IV, and the provisions of this Act, including those relating to the delivery of statements, shall apply accordingly.

2. The tax in respect of income arising from possessions out of the United Kingdom, *other than income to which rule 1 applies,*[19] shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom . . .[18a] as directed in Case I, without any deduction or abatement other than is therein allowed.

3. Rule 1 of the foregoing rules shall not apply—

(a) to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to the income therein described arising from the investments of the foreign life assurance fund of an assurance company;

and in such cases the computation shall be made in accordance with rule 2.

Rules applicable to Case VI

1. The nature of the profits or gains, and the basis on which the amount thereof has been computed, including the average, if any, taken thereon, shall be stated to the commissioners.

2. The computation shall be made, either on the full amount of the profits

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[18a] See Act of 1926, s. 29.

[19] Substituted by Act of 1940, s. 19 (1), (2).

or gains arising in the year of assessment, or according to an average of such a period, [*not being greater*][20] than one year, as the case may require, and as may be directed by the commissioners.

3. Every such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits or gains.

Miscellaneous Rules applicable to Schedule D

1. Tax under this Schedule shall be charged on and paid by the persons or bodies of persons receiving or entitled to the income in respect of which tax under this Schedule is hereinbefore directed to be charged.

2. A person shall not be charged to tax under this Schedule as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, who is in the United Kingdom for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment, but if any such person resides in the United Kingdom for the aforesaid period he shall be so chargeable for that year.

3.[21] . . .

4.—(1) A person engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish—

(a) where the trade, profession, employment, or vocation is carried on, whether carried on wholly or in part only within the United Kingdom, and whether he is engaged in one or more of such concerns; or

(b) where he ordinarily resides,

except that a person engaged in a trade within the United Kingdom carried on by the manufacture of goods, wares, or merchandise shall be assessable and chargeable—

(a) at the place of manufacture, although the sales thereof be elsewhere; or

(b) where he ordinarily resides.

(2) A person who is a householder and not engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish in which his dwelling-house is situate, or where he ordinarily resides.

(3) A person not engaged in a trade, profession, employment, or vocation, who has two or more places of ordinary residence, shall be assessable and chargeable at either such place.

(4) A person who is neither a householder, nor engaged in a trade, profession, employment, or vocation, who has a place of ordinary residence, shall be assessable and chargeable in the parish in which he ordinarily resides.

(5) Every other person not hereinbefore described shall be assessable and chargeable in the parish where he resides at the time of the issue of the general notices under this Act, or where he first comes to reside after the time of the issue of those general notices.[21a]

(6) Every assessment and charge made in pursuance of the above provisions shall be valid and effectual, notwithstanding the subsequent removal of the person from the parish in which he is assessed or charged.

(7) For the purpose of ascertaining the proper parish of assessment and charge, every person who delivers a list or statement under this Act shall deliver at the same time a signed declaration stating—

(a) where he is assessable and chargeable; and

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[20] Amended, Act of 1926, s. 29 (2).

[21] Repealed, Act of 1926, s. 37, and Fifth Sched., Part I.

[21a] See Act of 1942, Tenth Sched., para. 1 (1).

(b) whether he is or is not engaged in a trade, profession, employment, or vocation, and, if so, the place within the United Kingdom where it is carried on, and particulars of every trade, profession, employment, or vocation in which he shall be engaged in such place, whether it be carried on wholly or partly within the United Kingdom.

5. The commissioners may require a person who has two residences, or who carries on or exercises a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, to deliver in each such parish the like lists, declarations, and statements as he is required to deliver in the parish where he ought to be assessed and charged, but no such person shall by reason thereof be liable to any double charge.

6. . . .[21b]

7.—(1) Where—

(a) any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure, or concern; or

(b) any annuities, pensions, or other annual sums payable out of the funds of any institution in India,

are intrusted to any person in the United Kingdom for payment to any persons in the United Kingdom, the same shall be assessed and charged to tax under this Schedule by the special commissioners.

(2) All the provisions of Schedule C relating to the tax to be assessed and charged in respect of dividends payable out of any public revenue other than that of the United Kingdom, and intrusted to any person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) for payment to any persons in the United Kingdom, shall extend to the tax to be assessed and charged under this rule.[22]

Schedule E

Tax under Schedule E shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension, or stipend payable by the Crown or out of the public revenue of the United Kingdom, other than annuities charged under Schedule C, for every twenty shillings of the annual amount thereof.[23]

Rules applicable to Schedule E

1. Tax under this Schedule shall be annually charged on every person having or exercising an office or employment of profit mentioned in this Schedule, or to whom any annuity, pension, or stipend, as described in this Schedule, is payable, in respect of all salaries, fees, wages, perquisites or profits whatsoever therefrom *for the year of assessment*,[24] . . . ,[25] after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been really and bona fide paid and borne by the party to be charged.

[21b] Repealed, No. 2 Act of 1945, s. 21 (6).
[22] Para. (2) repealed, Act of 1936, Fifth Sched.
[23] Operation of Sched. E extended, Act of 1922, s. 18 (1); Act of 1932, s. 17 (2).
[24] As to the words in *italics*, see s. 45 (1) of the Act of 1927.
[25] Words in rule 1, and rule 4 repealed, Finance Act, 1922, Third Sched., Part I.

2. Every assessment shall be made for one year, and the tax in respect thereof shall be levied for that year without any new assessment notwithstanding any change in the holder of any office or employment; but if, during the year of assessment, any person chargeable quits the office or employment, or dies, he, or his executors or administrators, respectively, shall be liable for tax in respect of the period during which he held or exercised the office or employment, and any successor shall in like manner be liable in respect of the period during which he has held or exercised the same.[26]

3. If an annuity, pension, or stipend ceases within the year of assessment, the assessment thereon shall be discharged as from the date of cessation.[26] . . .[26]

5. If at any time, either during the year of assessment or in respect of that year, a person becomes entitled to any additional salary, fees, or emoluments beyond the amount for which an assessment has been made upon him, or for which at the commencement of that year he was liable to be charged an additional assessment shall, as often as the case may require, be made upon him in respect of any such additional salary, fees or emoluments, so that he may be charged in respect of the full amount of his salary, fees or emoluments for that year.

If any person proves to the satisfaction of the commissioners concerned that the amount for which an assessment has been made in respect of his salary, fees or emoluments for any year of assessment exceeds the amount of the salary, fees or emoluments for that year, the assessment shall be adjusted and any amount overpaid by way of tax shall be repaid.[27]

6. The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom or by the officers hereinafter respectively described, namely—

(a) offices belonging to either House of Parliament;
(b) offices belonging to any court of justice in the United Kingdom, whether civil, criminal, ecclesiastical, naval, military, or air force;
(c) public offices under the civil government of the Crown, or in any county palatine, or the Duchy of Cornwall;
(d) officers in His Majesty's navy;
(e) commissioned officers in His Majesty's military forces;
(f) commissioned officers in His Majesty's air force;
(g) offices or employments of profit under any ecclesiastical body;
(h) offices or employments of profit under any company or society, whether corporate or not corporate;
(i) offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;
(j) offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls, or duties;
(k) all other public offices, or employments of profit which are of a public nature.

7.[27a]—(1) Tax in respect of offices and employments of profit held under a railway company shall be charged by the special commissioners, who shall notify to the secretary or other officer of the company the particulars of the assessments.

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[26] See previous page. [26] See Act of 1927, s. 45 (9).
[27] Para. inserted, Act of 1922, s. 18 (5); and see Act of 1927, s. 45 (9).
[27a] But see Employments Regs., 1944, reg. 42, p. 767.

(2) Any such assessment shall be deemed to be and shall be an assessment upon the company, and the tax in respect thereof shall be paid, collected, and levied accordingly, and the company or the secretary or other officer may deduct out of the emoluments of the holder of any such office or employment of profit the tax so charged.

8. In estimating the tax payable, all official deductions and payments made on receipt of the emoluments of any office or employment of profit, or on receipt of any annuity, pension, or stipend, or on passing the accounts of the office, may be deducted if a due account thereof is rendered to the commissioners and proved to their satisfaction.

9. If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively, and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

10. Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money, wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments are payable, the Treasury may fix such sum, as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in charging the tax on the said salary, fees, or emoluments, there shall be deducted from the amount thereof the sum so fixed by the Treasury:

Provided that if any person would, but for the provisions of this rule, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

11.—(1) Where any official pay is payable at a public office, or by any officer of the Royal household, or by a Crown receiver or paymaster, or by any agent employed in that behalf, the tax chargeable thereon shall be deducted out of the official pay, or out of any money which is payable on account of that official pay or any arrears thereof, and shall be applied in satisfaction of any such tax which has not been otherwise paid, and shall be paid to the Commissioners of Inland Revenue.

(2) If the tax payable is charged by the general commissioners in their respective divisions, they shall transmit an account of the amount of tax so charged to the office where the official pay is payable, in order that it may be there deducted.

(3) In this rule the expression "official pay" means any salary, fees, wages, perquisites, or other profits, or any annuity, pension, or stipend.

(4) Where an annuity or pension is payable out of any particular branch of the public revenue at the office of that branch, the commissioners acting for that department may charge the tax in respect of the same as if the annuity or pension were salary or wages payable thereout.

12. Where any emoluments chargeable under this Schedule do not arise as described in the last preceding rule, but arise from any other office or employment of profit, and are payable by any officer, receiver, or agent, any tax chargeable in respect thereof which has not been otherwise paid shall be deducted therefrom or from the arrears thereof and paid to the proper officer.

13.—(1) If either—

(i) the tax in respect of any office or employment of profit cannot be deducted in the hands of the appropriate officer or of an agent for payment of the emoluments thereof; or

(ii) the said emoluments have been paid over to the person entitled to them;

and the person charged neglects or refuses to pay the tax, the commissioners for the offices concerned may, by writing under their hands and seals, certify the neglect or refusal, and the sum payable, to the general commissioners for the division comprising the parish in which the person charged resides.

(2) The said last-mentioned commissioners on receipt of the certificate shall, by warrant under their hands and seals, empower the respective collectors of the said tax under this Schedule, or the collectors of the parish where the person chargeable resides, to levy the tax in the same manner and with the like powers as other tax is leviable by them under this Act.

(3) The collectors shall execute the warrant in the manner prescribed by this Act and as if the person chargeable had been charged with tax in the parish where he resides, and the moneys recovered shall be paid over to the proper officer.

14.—(1) If an office or employment of profit chargeable under this Schedule is executed by deputy, the deputy, if he is in receipt of the profits thereof, shall pay the tax charged thereon, and deduct it out of the profits of the office or employment.

(2) If the profits of any officer or officers are received by any other officer on his or their behalf, or as a fund to be divided among such officers, the officer receiving the same shall pay the tax charged thereon and deduct it out of the sums received before they are handed over or divided.

(3) In the case of non-payment of the tax, the said deputy or officer receiving the profits shall be liable to such distress as is prescribed by this Act against any person holding the office or employment, and to any other remedy and penalty herein provided.

15. Where deduction of tax is authorised to be made out of any sums, the deduction shall be made at such times in each year as the said sums are payable.

16. If any emoluments of any office or employment of profit, or any annuity, pension, or stipend charged under this Schedule are charged with a sum payable to another person, such portion of the tax shall be deducted from that sum as the tax thereon would amount unto, and that person, or any agent or receiver on his behalf, shall allow the deduction on receipt of the residue of the sum payable.

17. If a deputy, clerk, or other person is employed under the holder of an office or employment of profit, and his salary or wages are paid out of the emoluments thereof, the holder of the office may deduct out of the salary or wages payable by him such a portion of the tax charged on the emoluments of the office or employment as the tax on the said salary or wages would amount unto, and the deduction shall be allowed upon receipt of the residue of the salary or wages.

18.—(1) The tax shall be assessed and charged by the respective commissioners for all the offices in each department, in the place where the said commissioners execute their offices, although certain of the offices in the same department may be executed elsewhere.

(2) A person chargeable in respect of an office or employment of profit shall be deemed to exercise it at the head office of the department under which it is held, and shall be assessed and charged at that head office, although the duties of the office or employment are performed, or any profits thereof are payable elsewhere, whether within the United Kingdom or not.

(3) An office shall be deemed to belong to, and shall be charged by or under, the principal officers of the department by or under whom the appointment to the office is made, but if the appointment is made by an inferior officer of the department, such office shall be charged by the commissioners by whom that inferior officer is chargeable in respect of his own office:

Provided that an officer who holds an appointment under the Great Seal or Privy Seal of England or Scotland, or an appointment under the Royal Sign Manual, or an appointment under the Treasury but not exercised in the Treasury, shall be assessed and charged in that department in which his office is exercised.

(4) Nothing in this rule shall limit the right given by this Act to any other commissioners to assess and charge offices within their jurisdiction, although those offices may not be held under their appointment, or although the profits thereof may not be payable by them or by their order.

(5) Notwithstanding anything in this rule, a person may be assessed and charged under this Schedule by the commissioners acting for any parish in which he ordinarily resides *or in which he is employed.*[28]

THE GENERAL RULES[29]

General Rules applicable to Schedules A, B, C, D and E

1. Every body of persons shall be chargeable to tax in like manner as any person is chargeable under the provisions of this Act.

2.—(1) In assessing the tax chargeable under any Schedule upon a clergyman or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his profession or vocation—

(a) any sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty as a clergyman or minister;

(b) such part of the rent (not exceeding *one-quarter*[28a]), as the commissioners by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister;

and where any such clergyman or minister is in the occupation of a dwelling-house, but pays no rent therefor, he shall for the purposes of the foregoing provision be deemed to pay a rent equal to the annual value of the dwelling house as assessed to tax under Schedule A.

(2) If no such deduction has been made, a proportionate part of the tax paid by him shall be repaid to the clergyman or minister on proof to the commissioners that any sum has been expended as aforesaid.

3. Every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax, notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity, or stipend (save as herein is excepted), or from any trade, profession, employment, or vocation in the United Kingdom or elsewhere.

4. The trustee, guardian, tutor, curator, or committee of any incapacitated person having the direction, control, or management of the property or concern of any such person, whether such person resides in the United Kingdom or not, shall be assessable and chargeable to tax in like manner and to the like amount as that person would be assessed and charged if he were not an incapacitated person.

5. A person not resident in the United Kingdom, whether a British subject or not, shall be assessable and chargeable in the name of any such trustee, guardian, tutor, curator, or committee, or of any factor, agent, receiver,

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[28] Words inserted, Finance Act, 1922, s. 18 (4).

[28a] Amended, Finance Act, 1944, s. 22.

[29] See Finance Act, 1918, s. 28.

branch, or manager, whether such factor, agent, receiver, branch, or manager has the receipt of the profits or gains or not, in like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in the United Kingdom and in the actual receipt of such profits or gains.

6. A non-resident person shall be assessable and chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any factorship, agency, receivership, branch, or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch, or manager.

7. Where a non-resident person, not being a British subject or a British, Indian, Dominion, or Colonial firm or company, or branch thereof, carries on business with a resident person, and it appears to the commissioners by whom the assessment is made that, owing to the close connection between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

8. Where it appears to the commissioners by whom the assessment is made or, on any objection or appeal, to the general or special commissioners, that the true amount of the profits or gains of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the commissioners may, if they think fit, assess and charge the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as statements are to be delivered by persons acting for incapacitated or non-resident persons of profits or gains to be charged.

9.—(1) The amount of percentage under the last preceding rule shall in each case be determined, having regard to the nature of the business, by the commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional commissioners, to objection or appeal to the general or special commissioners.

(2) If either the resident person or non-resident person is dissatisfied with the percentage determined either in the first instance or by the general or special commissioners on objection or appeal, he may, within four months of that determination, require the commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

10. Nothing in these rules shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorised person carrying on the regular agency of the non-resident person or a person chargeable as if he were an agent in pursuance of these rules, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

11. The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of these rules in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

12. Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced out of the United Kingdom by the non-resident person, the person in whose name the non-resident person is chargeable may, if he thinks fit, apply to the commissioners by whom the assessment is made, or in case of an appeal to the general or special commissioners, to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the commissioners concerned of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

13. The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done under this Act for the purpose of assessment and payment of tax.

14. Any person who has been charged under this Act in respect of any incapacitated or non-resident person as aforesaid may retain, out of money coming into his hands on behalf of any such person, so much thereof from time to time as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of this Act.

15.—(1) A receiver appointed by any court in the United Kingdom which has the direction and control of any property in respect of which tax is charged in accordance with the provisions of this Act shall be assessable and chargeable with tax in like manner and to the like amount as would be assessed and charged if the property were not under the direction and control of the court.

(2) Every such receiver shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment and payment of tax.

16. A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried:

Provided that—

(1) the profits of a married woman living with her husband shall be deemed the profits of the husband, and shall be assessed and charged in his name, and not in her name or the name of her trustee; and

(2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a feme sole if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit.

17.—(1) If an application[s 25a] is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either

[s 25a] See Act of 1920, s. 25.

by a husband or wife, within six months before the *sixth day of July*[29] in any year of assessment, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge, and recovery of tax, and the penalties for failure to deliver a statement of profits or gains, shall, save as otherwise provided by this Act, apply as if they were not married.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this rule to be made at any time, and the provisions of this Act relating to penalties for neglect or refusal to deliver, or for delay in delivering true and correct statements of profits or gains, shall, with the necessary modifications, apply in the case of the neglect or refusal to make, or wilful delay in making, any such return.

18. Where any person dies without having delivered a statement of all his profits or gains chargeable to tax with a view to an assessment thereon in due course, an assessment in respect of the profits or gains which arose or accrued to him before his death may be made at any time within the year of assessment, or within three years after the expiration thereof, upon his executors or administrators, and the amount of the tax thereon shall be a debt due from and payable out of his estate.

19.—(1) Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, no assessment shall be made upon the person entitled to such interest, annuity, or annual payment, but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the *standard rate for the year in which the amount payable becomes due*.[30a]

The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.

(2) Where any royalty, or other sum, is paid in respect of the user of a patent, wholly out of profits or gains brought into charge to tax, the person paying the royalty or sum shall be entitled, on making the payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the royalty or sum was accruing due.[30b]

20. The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying such dividend shall be entitled to deduct the tax appropriate thereto.[31]

21.—(1) Upon payment of any interest of money, annuity, or other annual payment[32] charged with tax under Schedule D, or of any royalty or other sum

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[29] See Finance Act, 1919, s. 26. See also Finance Act, 1920, s. 22.
[30a] See Act of 1927, s. 29 (1). [30b] See Income Tax Act, 1918, s. 21.
[31] See No. 1 Act of 1921, s. 7. [32] See Act of 1927, s. 25.

paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.[sss]

(2)[sss] Where any such payment as aforesaid it made by or through any person, that person shall forthwith deliver to the Commissioners of Inland Revenue, for the use of the Special Commissioners, an account of the payment, or of so much thereof as is not made out of profits or gains brought into charge, and of the tax deducted out of the payment or out of that part thereof, and the Special Commissioners shall assess and charge the payment of which an account is so delivered on that person.

(2A) The Special Commissioners may, where any person has made default in delivering an account required by this Rule, or where they are not satisfied with the account so delivered, make an assessment according to the best of their judgment, and if any person neglects or refuses to deliver an account so required, he shall forfeit the sum of one hundred pounds over and above the tax chargeable.

(2B) All the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with income tax and to income tax assessments;

(b) to appeals against such assessments;

(c) to the collection and recovery of income tax;

(d) to cases to be stated for the opinion of the High Court,

shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this Rule, and the Special Commissioners shall, for the purpose of an assessment under this Rule, have any powers of a surveyor, and, for the purpose of the representation of the Crown before the Special Commissioners on any appeal under this Rule, any person nominated in that behalf by the Commissioners of Inland Revenue shall have all such powers as a surveyor has at and upon the determination of an appeal.

(3) The amount of annuities which an assurance company carrying on the business of granting annuities is entitled, for the purposes of this rule, to treat as having been paid out of profits or gains brought into charge to tax, shall not exceed the amount of the taxed income of its annuity fund.

22.—(1) If a difference arises—

(a) between tenant and landlord or any other persons with regard to the deduction on account of tax to be made from any annual sum; or

(b) between the occupier for the time being and any former occupier of lands, tenements, hereditaments or heritages, his executors, administrators, or assigns, with regard to the proportion of tax to be paid or allowed by either of them respectively;

the general commissioners of the division shall settle the proportion of the payments or deductions to be made according to the provisions of this Act, and, in default of payment, shall levy the same as if the proportions settled by them had been charged upon the respective persons, and shall pay over the same to the collector or to the proper person, as the case may require.

(2) In any such case the determination of the general commissioners shall be final.

(3) In this rule "annual sum" means any interest, annuity, rent, rent-charge, fee-farm rent, rent service, quitrent, feu duty, or other rent or annual payment.

[sss] Paras. (2), (2A), (2B) *inserted in place of* para. (2) by Act of 1927, s. 26.

[sss] See the Income Tax Act, 1945, ss. 37 (2), 41. And Finance (No. 2) Act, 1945, s. 21, as to rr. 19, 21.

23.—(1) A person who refuses to allow a deduction of tax authorised by this Act to be made out of any payment, shall forfeit the sum of fifty pounds.

(2) Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction shall be void.[24]

SECOND SCHEDULE

GENERAL COMMISSIONERS FOR CERTAIN CITIES AND TOWNS

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THIRD SCHEDULE

QUALIFICATIONS OF GENERAL COMMISSIONERS

. . . . . .

FOURTH SCHEDULE

DECLARATIONS

FORM of DECLARATION to be made by GENERAL, ADDITIONAL and SPECIAL COMMISSIONERS acting in respect of TAX under Schedule D

. . . . . .

FORMS of DECLARATION to be made by SURVEYORS, ASSESSORS, COLLECTORS, CLERKS TO COMMISSIONERS

. . . . . .

FIFTH SCHEDULE

STATEMENTS, LISTS, AND DECLARATIONS

I.—By every OCCUPIER of LANDS, TENEMENTS, HEREDITAMENTS or HERITAGES to be charged under Schedules A and B, or either of them.

A statement of the rent and annual value, or the annual value, as the case shall require, of all lands, tenements, hereditaments, or heritages, occupied in every parish, distinguishing the proportions in each parish, and estimating separately such as are occupied as owner or tenant, and also such as are held under different landlords, and also such as are chargeable by reference to the rent or annual value, or on the amount of profits; and also estimating separately the rent or annual value chargeable in respect of the property, and the amount chargeable in respect of the occupation, distinguishing the same as follows:—

Lands and tenements occupied as owner;
Lands and tenements let at rackrent within seven years;
Lands and tenements let at rackrent before the period of seven years, with the rent and annual value thereof estimated separately;
Lands and tenements let, but not at rackrent, with the rent and annual value thereof estimated separately;
The amount at which such land and tenements are rated to the poor;

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[24] See Act of 1927, s. 25 (5).

The amount or any composition, rent, rentcharge, or annual payment paid in the preceding year to the rector or vicar or other person, for tithes of the above lands and tenements;

The amount of each deduction claimed in respect thereof, and stating if tithe-free, in part or in the whole, and the amount of any modus for tithes and real composition.

. . .[35]

XV.—GENERAL DECLARATION by each PERSON returning a STATEMENT of PROFITS or GAINS to be charged under Schedules A, B, D, or E.

Declaring the truth thereof, and that the same is fully stated on every description of property, or profits or gains, included in the Act relating to the said tax, and appertaining to such person, estimated to the best of his judgment and belief, according to the provisions of this Act.

. . .[35]

XVII.—DECLARATIONS and STATEMENTS of TOTAL INCOME[36]

First. Declaration of the amount of value of property or profits or gains returned, or for which the claimant has been, or is liable to be, assessed.

Second. Declaration of the amount of rents, interests, annuities, or other annual payments, in respect of which the claimant is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third. Declaration of the amount of interest, annuities, or other annual payments to be made out of the property or profits or gains assessed on the claimant, distinguishing each source.

Fourth. Statement of the amount of income derived according to the three preceding declarations.

Fifth. Statement of any tax which the claimant may be entitled to deduct, retain or charge against any other person.

SIXTH SCHEDULE

FORMS

[NOTE.—These forms may be varied or other forms prescribed by the Commissioners of Inland Revenue as circumstances require.]

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SEVENTH SCHEDULE

ENACTMENTS REPEALED

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[35] Paras. II—XIV and XVI repealed, Act of 1927, s. 47, and Sixth Sched., Part I.
[36] Heading substituted, Finance Act, 1927, s. 46, and Fifth Sched., Part III.

THE FINANCE ACT, 1919
(9 & 10 Geo. 5, c. 32)

[31st July, 1919]

PART II—INCOME TAX

. . . . . .

16.—(1) Income from wounds and disability pensions to which this section applies shall be exempt from income tax (including super-tax) and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts, for the year 1918—19, or any succeeding year of assessment.

(2) This section applies to—

(a) wounds pensions granted to members of the naval, military, or air forces of the Crown;

(b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military, or air-force service;

(c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military, or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(e) injury and disablement pensions payable under any scheme made under the Injuries in War (Compensation) Act, 1914, the Injuries in War Compensation Act, 1914 (Session 2), and the Injuries in War (Compensation) Act, 1915, or under any War Risks Compensation Scheme for the Mercantile Marine:

Provided that, where the amount of any retired pay or pension to which this section applies is not solely attributable to disablement or disability, the relief conferred by this section shall extend only to such part as is certified by the Minister of Pensions, after consultation with the appropriate Government Department, to be attributable to disablement or disability.

(3) If any person has paid income tax or super-tax of an amount exceeding that which he would have been liable to pay if this section had been in force, he shall, on proof of the facts to the satisfaction of the Commissioners having jurisdiction in the matter, be entitled to repayment of the excess.

. . . . . .

18. (*Provision as to allowances for repairs.*)[87]

22. Where a clergyman or minister of any religious denomination occupies a dwelling-house rent free by virtue of his office in such circumstances that the annual value of the house does not fall to be regarded as part of his income, he shall be entitled, on giving notice to the surveyor of taxes not later than the thirtieth day of September in any year, or, where the occupation of such clergyman or minister commenced after the thirtieth day of June, before the expiration of three months after the date of the commencement of such occupation, to require that the annual value of the house, after deducting therefrom the amount of any annual sum payable in respect of such house, shall for all purposes of income tax for that year be treated as earned income of such clergyman or minister.

In this section the expression "annual sum" has the same meaning as in Rule 4 (2) of No. VIII of the rules applicable to Schedule A.

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[87] Repealed, Finance Act, 1937, Sixth Sched., Part I.

26. The sixth day of July shall be substituted for the sixth day of May in section eight of the Income Tax Act, 1918, and in rule seventeen of the general rules as the date before which an application for separate assessment of husband and wife must be made under those provisions; and an application for the purposes of those provisions may in the case of persons marrying during the course of a year of assessment be made as regards that year at any time before the sixth day of July in the following year; and those provisions shall have effect accordingly.

28. In this Part of this Act, and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

References to Schedule A, B, C, D, or E (respectively) shall be construed as references to those Schedules in the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the general rules" means the general rules applicable to Schedules A, B, C, D, and E, set out in the First Schedule to the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the year 1919—20" means the year of assessment beginning on the sixth day of April nineteen hundred and nineteen, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on the sixth day of April in the first mentioned of those years;

The expression "earned income" has the meaning assigned to it in section fourteen of the Income Tax Act, 1918.[28]

The expression "the Income Tax Acts" means the Income Tax Act, 1918, and any other enactments relating to income tax.

PART V—GENERAL

. . . . . .

32.—(1) . . .

Part II of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(2) This Act may be cited as the Finance Act, 1919.

. . . . . .

THE FINANCE ACT, 1920
(10 & 11 GEO. 5, c. 18)

[4th August, 1920]

. . . . . .

PART II—INCOME TAX

. . . . . .

15.— . . .

(4) In estimating the total income of any individual for the purpose of super-tax, the amount of any earned income shall be taken to be the full amount of that income without the deduction of any allowance under this Part of this Act, and section five of the Income Tax Act, 1918, shall have effect accordingly.

17.—(1) An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and who makes a return in the prescribed form of his total income shall be entitled for the purpose of ascertaining the

[28] Extended, Finance Act, 1920, s. 22.

amount of the income on which he is to be charged to income tax (in this Act referred to as "the taxable income") to have such deductions as are specified in the five sections of this Act next following made from his assessable income.[39]

(2) The provisions of sections twenty-seven, twenty-eight, twenty-nine, and thirty of the Income Tax Act, 1918, and of paragraph XVII of the Fifth Schedule to that Act, shall apply for the purpose of claims for any such deductions as aforesaid as if those provisions were re-enacted in this Act and in terms made applicable to such claims.

18.—(1) The claimant, if he proves that for the year of assessment he has his wife living with him, or that his wife is wholly maintained by him during the year of assessment, and that he is not entitled in computing the amount of his income for that year for the purposes of the Income Tax Acts to make any deduction in respect of the sums paid for the maintenance of his wife, shall be entitled to a deduction of *one hundred and eighty* pounds, and in any other case to a deduction of *one hundred and ten* pounds.[40]

(2) If the total income of the claimant includes any earned income of his wife the deduction to be allowed under this section shall be increased by an equal amount to *nine-tenths*[40] of the amount of that earned income but not exceeding in any case *eighty*[41] pounds.

19.—(1) *If the claimant proves that he is a widower and that for the year of assessment a person, being a female relative of his or of his deceased wife, is resident with him for the purpose of having the charge and care of any child of his or in the capacity of a housekeeper, or that he has no female relative of his own or of his deceased wife who is able and willing to take such charge or act in such capacity and that he has employed some other female person for the purpose he shall, subject as hereinafter provided, be entitled to a deduction of fifty pounds in respect of that female relative or female person.*[42]

Provided that—

(a) no deduction shall be allowed under this section unless the claimant proves that no other individual is entitled to a deduction in respect of the female relative under the provisions of this Part of this Act or, if any other individual is so entitled, that the other individual has relinquished his claim thereto; and

(b) no deduction shall be allowed under this section where the female relative is a married woman living with her husband, and the husband has claimed and been allowed a deduction of two hundred and twenty-five pounds[43] under the preceding provisions of this Part of this Act; *and*

(c) *not more than one deduction of fifty pounds shall be allowed to any claimant under this section in any year.*[42]

(2) In this section the expression "child" means a child in respect of whom a deduction is allowed under this Part of this Act.

(3) This section shall apply to a claimant being a widow as it applies to a claimant being a widower, with the substitution of "her deceased husband" for "his deceased wife."

20. If the claimant proves—

(a) that he is unmarried and that he has living with him either his mother, being a widow or a person living apart from her husband,

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[39] See also Act of 1924, s. 29; Act of 1927, s. 40 (1).

[40] Amounts substituted, No. 2 Act of 1945, s. 17 (2). [41] Act of 1942, s. 22.

[42] Sub-s. 1 substituted, and proviso (c) added, Act of 1926, s. 22; and see Act of 1927, s. 40 (1). Sub-s. 2 substituted, No. 2 Act of 1921, 4th Sched.

[43] Sic; but see s. 18 above, and note [40].

or some other female relative, for the purpose of having the charge and care of any brother or sister of his, being a child in respect of whom a deduction is allowed under this Part of this Act, and that he maintains the mother or other relative at his own expense; and

(b) that neither he nor any other individual is entitled to a deduction in respect of the same person under any of the other provisions of this Part of this Act, or if any other individual is entitled to any such deduction that the other individual has relinquished his claim thereto,

he shall be entitled to a deduction of *fifty*[45] pounds.

21.[46]—(1) If the claimant proves that he has living at *any time within*[47] the year of assessment any child who is either under the age of sixteen years or who, if over the age of sixteen years at the commencement of that year, is receiving full time instruction at any university, college, school, or other educational establishment, he shall, subject to the provisions of this section, be entitled in respect of *each such child* to a deduction of *fifty pounds* . . .[48]

The expression "child" in this provision includes a step-child and an illegitimate child whose parents have married each other after his birth.

(2) If the claimant proves that for the year of assessment he has the custody of and maintains at his own expense any child who is under the age of sixteen years at the commencement of that year, or who, if over the age of sixteen years at the commencement of that year, is receiving such full-time instruction as aforesaid, and that neither he nor any other individual is entitled to a deduction in respect of the same child under the foregoing provisions of this section or under any of the other provisions of this Part of this Act, or, if any other individual is entitled to such a deduction, that that other individual has relinquished his claim thereto, he shall be entitled in respect of the child to the same deduction as if the child were a child of his.

(3) No deduction shall be allowed under this section in respect of any child who is entitled in his own right to an income exceeding *fifty pounds*[48] a year.

Provided that in calculating the income of the child for the purposes of the foregoing provision no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment.

(4) If any question arises as to whether any person is entitled to an allowance under this section in respect of a child who is over the age of sixteen years, as being a child who is receiving such full-time instruction as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland the Scottish Education Department and the Lord Lieutenant of Ireland shall respectively be substituted for the Board of Education.

22.[46]—(1) If the claimant proves that he maintains at his own expense any person, being a relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or his or his wife's widowed mother, whether incapacitated or not, and being a person whose total income from

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[45] See note [47]; and see Act of 1927, s. 40 (1); also Act of 1943, s. 15, p. 676.
[46] See Act of 1927, s. 40 (1).
[47] Amended, No. 2 Act of 1931, s. 8 (1), and Fourth Sched.
[48] Amended, Act of 1936, s. 21; Act of 1936, s. 17. For 1940—41 and subsequent years, the amount in either case is to be £50: No. 2 Act of 1939, s. 9 (3).

all sources does not exceed fifty pounds [*eighty pounds*[47]] a year, he shall be entitled to a deduction of twenty-five pounds in respect of each person whom he so maintains [*in respect of each person whom he so maintains to a deduction of fifty pounds reduced, if the total income from all sources of that person exceeds thirty pounds a year, by the amount of the excess*],[48] and a like deduction shall be made in the case of claimant who, by reason of old age or infirmity, is compelled to depend upon the services of a daughter resident with and maintained by him or her.

(2) Where two or more persons jointly maintain any such person as aforesaid, the deduction to be made under this section shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) This section shall apply to a claimant being a female person as it applies to a claimant being a male person with the substitution of "husband" for "wife."

23. The rate at which the first two hundred and twenty-five pounds of the taxable income of an individual shall be charged to income tax shall be half the standard rate of tax.[50]

24.—(1) Subject as hereinafter provided, no allowance in respect of earned income, and no deduction from assessable income, shall be given or made,[51] and income tax on the first two hundred and twenty-five pounds[51] of the taxable income shall not be chargeable at the reduced rate, under the foregoing provisions of this Part of this Act, and no relief shall be granted under section thirty-two of the Income Tax Act, 1918, in the case of any individual who is not resident in the United Kingdom:

Provided that the foregoing provision shall not apply in the case of any individual who satisfies the Commissioners of Inland Revenue that he or she—

(a) is a British subject; or

(b) is a person who is or has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any native State under the protection of His Majesty; or

(c) is resident in the Isle of Man or the Channel Islands; or

(d) has previously resided within the United Kingdom and is resident abroad for the sake of his or her health or the health of a member of his or her family resident with him or her; or

(e) is a widow whose late husband was in the service of the Crown;

so, however, that no such allowance, deduction, reduction of rate, or relief as aforesaid shall be given so as to reduce the amount of the income tax payable by that individual below an amount which bears the same proportion to the amount which would be payable by him by way of tax if the tax were chargeable on his total income from all sources, including income which is not subject to income tax charged in the United Kingdom, as the amount of the income subject to income tax so charged bears to the amount of his total income from all sources.[52]

(2) . . .[53]

25.—(1) Where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable

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[47] Words in brackets substituted in the general case; but where the claim is based upon the services of a daughter, the section stands as originally enacted; Act of 1943, s. 16 (1), below.

[48] See Act of 1927, s. 40 (2) for the relief substituted. [51] See Act of 1927, s. 40 (1).

[52] See Act of 1926, s. 20, p. 496; and Act of 1944, s. 23, p. 685.

[53] Repealed, S. L. R., 1927 (17 & 18 Geo. 5, c. 42).

on the incomes of the husband and wife respectively as if they were not married:—

(a) All the provisions of the Income Tax Acts relating to claims for an allowance in respect of earned income and deductions from assessable income and for relief under section thirty-two of the Income Tax Act, 1918, and the proof to be given with respect thereto, shall apply as if they were not married; and

(b) The income of the husband and wife shall be aggregated in estimating the amount to be repaid or deducted in respect of the deductions or relief aforesaid, and such amount shall not exceed the total amount that would have been repaid or deducted on account of such deductions or relief if such application as aforesaid had not been made; and[84]

(c) The benefit of any such deduction or relief may be given either by way of reduction of the amount of the tax to be paid or by repayment of any excess of tax which has been paid, or by both of these means, as the case requires, and shall be given to the husband and the wife—

(i) as regards the deduction in respect of earned income in proportion to the amounts of their respective earned incomes;

(ii) as regards any deduction or reduction under subsection (2) of section fifteen of the Finance Act, 1925, in proportion to the amounts of their respective total incomes;

(iii) as regards any other deductions in proportion to the amounts of tax which would have been payable by them respectively, if the only deductions allowable had been the deduction referred to in the foregoing sub-paragraph (i) or the deduction or reduction referred to in the foregoing sub-paragraph (ii), as the case may be; and

(iv) as regards relief given under section thirty-two of the Income Tax Act, 1918, to the husband or wife, as the case may be, by whom the payment is made:

Provided that in the case of a deduction in respect of a dependent relative or in respect of a child under subsection (2) of section twenty-one of this Act, the deduction shall be given to that one of the married persons by whom the relative or child is maintained.[84]

(d) For the purpose of any of the above-mentioned allowances or deductions or reliefs a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of Inland Revenue are not satisfied with the return they may obtain a return from the wife or husband, as the case may be.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and the provisions of the Income Tax Acts relating to penalties for neglect or refusal to deliver or for delay in delivering true and correct statements of profits or gains shall, with the necessary modifications, apply in the case of the neglect or refusal to make or wilful delay in making any such return.

27.—(1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves to the satisfaction of the special commissioners that he has paid Dominion income tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income tax

[84] Paras. (b) and (c) substituted by Act of 1927, s. 46, and Fifth Sched., Part II, 1.

paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom *income*[56] tax, the rate at which relief is to be given shall be the Dominion rate of tax:

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom *income*[56] tax:

. . .[56]

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any *relief to which he may be entitled under the provisions of this Part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income*[57] as may be necessary to secure that the amount of United Kingdom income tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income Tax Acts, no deduction shall be made on account of the payment of Dominion income tax in estimating income for the purposes of United Kingdom income tax, and where income tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income tax shall be deemed to be income arising or received after deduction of Dominion income tax and an addition shall, in estimating income for the purposes of the United Kingdom income tax, be made to that income of the proportionate part of the income tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income tax directly charged or chargeable in the Dominion in respect of that income:

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the special commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this subsection, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D; and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income tax in respect of the payment of United Kingdom income tax, then in assessing

[56] Words inserted and paragraph omitted, Act of 1927, s. 46, and Fifth Sched., Part II. And see No. 2 Act of 1945, s. 51 (2).

[57] Words in *italics* to be "construed as a reference to the relief substituted by Part III of the Act of 1927 (*i.e.*, s. 40 (2) as amended) for the relief under s. 23 of the Finance Act, 1920," *ibid.*

or charging income tax in the United Kingdom in respect of income assessed or charged to income tax in that Dominion a deduction shall be allowed in estimating income for the purpose of United Kingdom income tax of an amount equal to the difference between the amount of the Dominion income tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income tax in respect of the Dominion income tax for the period on the income of which the assessment or charge to United Kingdom income tax is computed.

In this subsection the expression "dividends" includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D and E, a body of persons is entitled to deduct income tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income tax.[57a]

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income tax in respect of the payment of United Kingdom income tax, the obligation as to secrecy imposed by the Income Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed both from United Kingdom income tax and from Dominion income tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular, by those regulations provide:—

(a) For making such arrangements with the Government of any Dominion to which the last preceding subsection applies as may be necessary to enable the appropriate relief to be granted:

(b) For prescribing the year which in relation to any Dominion income tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income tax.

(8) In this section—

(a) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions:

(b) The expressions "United Kingdom income tax" . . .[58] mean respectively income tax . . .[58] chargeable in accordance with the provisions of the Income Tax Acts:

(c) The expression "Dominion income tax" means any income tax or super-tax charged under any law in force in any Dominion, if that tax appears to the special commissioners to correspond with United Kingdom income tax . . .:[58]

[57a] Superseded by No. 2 Act of 1945, s. 52 (2).

[58] References to super-tax omitted, see note [56]; and see Act of 1940, 5th Sched., Pt. II (iv).

(d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income tax paid for the year by the amount of the income in respect of which the Dominion income tax is charged for that year, except that where the Dominion income tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the special commissioners.

The "appropriate rate of United Kingdom income tax" for any year of assessment shall be as follows:—[59]

(a) In the case of a person whose income is chargeable at the standard rate only, a rate ascertained by dividing the amount of tax payable by him for that year in respect of his total income (before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of section twenty-seven of the Finance Act, 1920) by the amount of his total income less any amount by reference to which he is by virtue of subsection (1) of section forty of this Act[59a] granted relief from income tax by means of a deduction of tax;

(b) In the case of a person part of whose total income is chargeable at a rate or rates in excess of the standard rate, the sum of the following rates:—

(i) The rate which would have been the appropriate rate in the case of that person if his income had been chargeable at the standard rate only; and

(ii) The rate ascertained by dividing the amount of the surtax payable by that person for the preceding year by the amount of his total income for that year: . .

26.—(1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school, or other educational establishment, shall be exempt from income tax (including super-tax), and no account shall be taken of any such income in computing the amount of income for the purposes of the Income Tax Acts.

(2) In this section the expression "scholarship" includes an exhibition, bursary, or any other similar educational endowment.

(3) If any question arises whether any income is income arising from a scholarship held as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland, the Scottish Education Department and the Lord Lieutenant, respectively, shall be substituted for the Board of Education.

. . . . . .

33. In this Part of this Act and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

The expression "earned income" means income which is earned income within the meaning of section fourteen of the Income Tax Act, 1918, and also includes any income arising in respect of Civil List pensions

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[59] Provisions substituted for second para. of sub-s. 8 (d), see note [56].

[59a] *i.e.*, The Finance Act, 1927, see note [56].

granted under the Civil List Act, 1837, as amended by any subsequent enactment:

The expression " relative " includes any person of whom the person claiming a deduction had the custody and whom he maintained at his own expense while that person was under the age of sixteen years:

. . .[80]

The expression " assessable income " in the case of any income other than earned income means the amount of that income as estimated in accordance with the provisions of the Income Tax Acts.

. . . . . .

PART VII—GENERAL

. . . . . .

61.—(1) Where any assessment to income tax, excess profits duty, or munitions exchequer payments for any year or period, or any duplicate of assessment to income tax for any year, or any return or other document relating to income tax, excess profits duty, or munitions exchequer payments, has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the commissioners, surveyors, assessors, collectors, and other officers respectively having powers in relation to income tax, excess profits duty, or munitions exchequer payments, as the case may be, may, notwithstanding anything in any enactment to the contrary, do all such acts and things as they might have done, and all acts and things done under or in pursuance of this section shall be as valid and effectual for all purposes as they would have been if the assessment or duplicate of assessment had not been made, or the return or other document had not been made or furnished, or required to be made or furnished:

Provided that, where any person who is charged with income tax, excess profits duty, or munitions exchequer payments in consequence or by virtue of any act or thing done under or in pursuance of this section, proves to the satisfaction of the commissioners having jurisdiction in the case that he has already paid any income tax, excess profits duty, or munitions exchequer payments for the same year or period in respect of the subject matter and on the account in respect of and on which he is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payment so made either by abatement from the charge or by repayment, as the case may require.

(2) In this section the expression " Commissioners " means, as the case may require, either the Commissioners of Inland Revenue or the Income Tax Commissioners concerned and the expression " income tax " includes " super-tax."

64.—(1) *Construction, short title, and repeal.*

. . . . . .

Part II of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(2) This Act may be cited as the Finance Act, 1920.[81]

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[80] Definition of " standard rate " repealed, Act of 1927, s. 47, and Sixth Sched., Part I.

[81] The Third Sched. contains consequential and minor amendments of the Act of 1918 which are embodied in the text, including a note which provides: " In this Schedule the expression ' allowance or deduction ' means any allowance, deduction, or reduction of rate made or allowed under sections 16 to 23, both inclusive, of this Act."

THE FINANCE ACT, 1921
(11 & 12 Geo. 5. c. 32)

[4th August, 1921]

Part II—Income Tax

. . . . . .

26. . . .[62]

27.—(1) The holder of any inscribed bonds or other securities, the interest on which is by virtue of directions given under section forty-nine of the Income Tax Act, 1918, or under any enactments repealed by that Act, payable without deduction of income tax, may make an application to the Bank under this section requesting that income tax shall be deducted from the interest on those bonds or securities before payment thereof, and, where any such application is made, income tax in respect of the interest on those bonds or securities shall, so long as they remain inscribed in the name of the person making the application and subject to the withdrawal of the application as hereinafter authorised, be deducted and charged in the same manner as if they were not bonds or securities to which the said section applied, and section twenty-five of the Finance Act, 1919, shall have effect as if, during the period in which the interest was paid without deduction of income tax, those bonds and securities were original securities, and as if thereafter they were substituted securities within the meaning of that section.

(2) An application under this section shall be in such form as the Bank, with the approval of the Treasury, may prescribe, and any application made less than two months before the date on which any interest is payable shall only have effect as regards any payment of interest subsequent to the payment falling due on that date.

(3) An application made under this section may at any time be withdrawn by notice to the Bank in such form as the Bank, with the approval of the Treasury, may prescribe, but an application so withdrawn shall, notwithstanding the withdrawal, continue to have effect as regards any interest payable less than two months after the date on which the notice is received at the Bank.

(4) Where any bonds or securities to which this section applies are held upon trust, the holders of the bonds or securities may make an application under this section in respect thereof without the consent of any other person, notwithstanding anything in the instrument creating the trust.

(5) In this section—

The expression "the Bank" means the Bank of England or the Bank of Ireland as the case requires;

The expression "inscribed" means inscribed in the books of the Bank and includes "registered."

28.—(1) Notice of any claim for relief under section twenty-seven of the Finance Act, 1920 (which gives relief from United Kingdom income tax in respect of Dominion income tax), together with particulars of the claim, shall be given in writing to the surveyor of taxes or, in the case of a claim made by a person who is not resident in the United Kingdom, to the Commissioners of Inland Revenue, and, where an objection is made to the claim by the surveyor or commissioners, as the case may be, the special commissioners shall hear and determine the claim in like manner as in the case of an appeal

[62] Repealed, Act of 1926, s. 37, and Fifth Sched., Part I.

to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(2) The special commissioners in determining a claim under the said section twenty-seven shall have power to determine the rate at which relief is to be given and the amount of the relief to be given, and all questions whatsoever incidental to the determination of the matters as aforesaid.

. . . . . .

29. In any proceedings for the recovery of income tax under subsection (2) of section one hundred and sixty-nine of the Income Tax Act, 1918 (which provides for the summary recovery of income tax assessed and charged quarterly), a written statement as to the wages paid for any period to the person against whom the proceedings are brought, purporting to be signed by his employer for that period or by any responsible person in the employment of the employer, shall be prima facie evidence that the wages therein stated to have been paid to the person charged have in fact been so paid.[62a]

30.—(1) Exemption shall be granted—

(a) from income tax under Schedule A in respect of lands, tenements, hereditaments, and heritages owned and occupied by a charity, not being such lands, tenements, hereditaments or heritages as are mentioned in No. VI of Schedule A;[63]

(b) from income tax under Schedule B in respect of lands occupied by a charity:

Provided that the exemption under this paragraph shall not apply in the case of lands which are occupied for the purpose of husbandry unless the work in connection with the husbandry is mainly carried on by beneficiaries of the charity and the profits, if any, arising therefrom are applied solely to the purposes of the charity;

(c) *from income tax under Schedule D in respect of the profits of a trade carried on by any charity if the profits are applied solely to the purposes of a charity and either—*

(i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity; or

(ii) the work in connection with the trade is mainly carried on by beneficiaries of the charity.[64]

(2) The exemption granted by paragraphs (a) and (b) of subsection (1) of this section shall not extend to tax in respect of any rent payable or other annual payment to be made by a charity in respect of the lands, tenements, hereditaments, or heritages, or to any parts of those lands, tenements, hereditaments, or heritages, which are in the use and enjoyment of a person whose total annual income from all sources estimated in accordance with the provisions of the Income Tax Acts amounts to not less than one hundred and fifty pounds.

(3) In this section the expression "charity" means any body of persons or trust established for charitable purposes only.

31. The proviso to paragraph (c) of Rule 3 of the Rules applicable to Cases I and II of Schedule D in the Income Tax Act, 1918, shall have effect

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[62a] Sect. 169 (2) is repealed; but this section is kept in operation by Employments Act, 1943, s. 5 (3), proviso, p. 683; see Act of 1924, s. 30.

[63] See Act of 1926, s. 28, proviso.

[64] Paragraph substituted, Act of 1927, s. 24.

as though the words " shall not, unless in any particular case the Commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted, exceed two-thirds," were therein substituted for the words " shall not exceed two-thirds."

32.—(1) Subject to the provisions of this section and to any regulations made thereunder, exemption from income tax shall be allowed in respect of income derived from investments or deposits of a superannuation fund, and, subject as aforesaid, any sum paid by an employer or employed person by way of contribution towards a superannuation fund shall, in computing profits or gains for the purpose of an assessment to income tax under Case I or Case II of Schedule D or under Schedule E, be allowed to be deducted as an expense incurred in the year in which the sum is paid:

Provided that—

(a) no allowance shall be made under the foregoing provision in respect of any contribution by an employed person which is not an ordinary annual contribution, and, where a contribution by an employer is not an ordinary annual contribution, it shall, for the purpose of the foregoing provision, be treated as the Commissioners may direct, either as an expense incurred in the year in which the sum is paid or as an expense to be spread over such period of years as the Commissioners think proper; and

(b) no allowance shall be made under this section in respect of any payments in respect of which relief can be given under section thirty-two of the Income Tax Act, 1918.

(2) Income tax chargeable in respect of an annuity paid out of a superannuation fund to a person residing in the United Kingdom shall, if the Commissioners so direct, be assessed and charged on the annuitant under *Schedule E* instead of being deducted and accounted for under Rule 21 of the General Rules . . [64a]

(3) For the purposes of this section, the expression " superannuation fund " means, unless the context otherwise requires, a fund which is approved for those purposes by the Commissioners, and, subject as hereinafter provided, the Commissioners shall not approve any fund unless it is shown to their satisfaction that—

(a) the fund is a fund bona fide established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein;

(b) *the fund has for its sole purpose the provision of annuities for all or any of the following persons in the events respectively specified, that is to say, for persons employed in the trade or undertaking, either on retirement at a specified age, or on becoming incapacitated at some earlier age, or for the widows, children, or dependants of persons who are or have been so employed, on the death of those persons;* [65]

(c) the employer in the trade or undertaking is a contributor to the fund;

(d) the fund is recognised by the employer and employed persons in the trade or undertaking:

Provided that the Commissioners may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund, or any part of a fund, as a superannuation fund for the purposes of this section—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or

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[64a] Amended as to 1944—45 and onwards, Offices and Employments Act, 1944, s. 2 (1), and Sched.; see also s. 2 (1), proviso, and sub-s. 2, p. 663.

[65] Paragraph substituted, Finance Act, 1930, s. 19.

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose; or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.

(4) The Commissioners may make regulations generally for the purpose of carrying this section into effect and, in particular, without prejudice to the generality of the foregoing provision, may by such regulations—

(a) provide for the charging of and accounting for tax in respect of contributions (including interest) repaid to a contributor to a superannuation fund and on lump sums paid in commutation of or in lieu of annuities payable out of a superannuation fund as if any sums so repaid or paid were income of the year in which they are repaid or paid;

(b) require the trustees or other persons having the management of a superannuation fund, or an employer whose employees contribute to a superannuation fund, to deliver to the Commissioners such information and particulars as the Commissioners may reasonably require for the purposes of this section;

(c) prescribe in the manner in which claims for relief under this section are to be made and approved, and in which applications for the approval of a superannuation fund are to be made;

(d) provide for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this section;

(e) provide for determining what contributions to a superannuation fund are to be treated as ordinary annual contributions for the purposes of this section.

(5) . . .

(6) In this section the expression "the Commissioners" means the Commissioners of Inland Revenue.

33.—(1) All income receivable from any source whatsoever for the purposes of a special scheme or a supplementary scheme established under the Unemployment Insurance Act, 1920, by the body charged with the administration of the scheme shall be exempt from income tax.

(2) Any claim for exemption under this section shall be made and any such claim shall be allowed in the same manner as in the case of the exemption allowed under subsection (5) of section thirty-nine of the Income Tax Act, 1918.

34.—(1) Income tax shall not be charged in respect of a sewer vested in a local authority in the United Kingdom:

Provided that the foregoing exemption shall not extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer.

(2) In this section—

The expression "sewer" means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health;

The expression "local authority" means a public body having power under any enactment relating to the public health to construct and maintain sewers.

. . . . . .

PART VI—GENERAL

. . . . . .

65.—(1) Part II of this Act shall be construed together with the Income Tax Acts.

(2) This Act may be cited as the Finance Act, 1921.

THE FINANCE ACT, 1922
(12 & 13 GEO. 5, c. 17)

[20th July, 1922]

PART II—INCOME TAX

18.—(1) Such profits or gains arising or accruing to any person from an office, employment or pension as are, under the Income Tax Act, 1918, chargeable to income tax under Schedule D (other than the profits or gains chargeable under Case V of Schedule D, or under Rule 7 of the Miscellaneous Rules applicable to Schedule D), shall cease to be chargeable under that schedule and shall be chargeable to tax under Schedule E, and the rules applicable to that schedule shall apply accordingly subject to the provisions of this Act.

(2) . . . [65a]

(3) Rule 7 of the Rules applicable to Schedule E (which relates to the charge of tax in respect of offices and employments of profit held under a railway company), shall apply to all offices and employments held under, and pensions paid by, a railway company.

. . . [65a]

(4) Paragraph (5) of Rule 18 of the Rules applicable to Schedule E shall have effect as though the words " or in which he is employed " were inserted at the end thereof.

(5) The following paragraph shall be inserted at the end of Rule 5 of the Rules applicable to Schedule E:—[66]

(6) The provisions of subsection (1) and subsection (3) of this section shall have effect and shall be deemed always to have had effect, for the purpose of any assessment to income tax which is made or becomes final and conclusive after the first day of May, nineteen hundred and twenty-two, in respect of any employment (other than that of a weekly wage-earner employed by way of manual labour) under any public department, or under any company, society or body of persons or other employer mentioned in Rule 6 of the Rules applicable to Schedule E.

. . . . . .

19. Any person charged to income tax under Schedule E may appeal to the Special Commissioners against any assessment in respect of his emoluments for any year, or against the amount of tax deducted therefrom, and the provisions of section one hundred and forty-eight of the Income Tax Act, 1918, shall, with any necessary modification, apply to any such appeal:

Provided that, where any such person has under any other provisions of the Income Tax Acts any right of appeal to any other body of Commissioners, he may appeal either under those provisions or under this section, but not under both.

[65a] Sub-s. 2 and proviso of sub-s. 3 repealed, Employments Act, 1943, s. 5 (3).

[66] The added paragraph will be found set out *supra*, p. 484.

20.—(1) Any income—[67]

(b) which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the first day of May, nineteen hundred and twenty-two (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years; or

(c) which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the fifth day of April, nineteen hundred and fourteen, is payable to or applicable for the benefit of a child of that person for some period less than the life of the child;

shall, subject to the provisions of this section, but in cases under the above paragraph (c) only if and so long as the child is an infant and unmarried, be deemed for the purposes of the enactments relating to income tax (including super-tax) to be the income of the person who is or was able to obtain the beneficial enjoyment thereof, or of the person, if living, by whom the disposition was made, as the case may be, and not to be for those purposes the income of any other person: . . .[67]

Provided that—

(i) the above paragraph (c) shall not apply as regards any income which is derived from capital which, at the end of the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child, or any income which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made; and

(ii) for the purposes of the said paragraph (c) income shall not be deemed to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon being executed by the child.

(2) Where by virtue of paragraph (b) or paragraph (c) of subsection (1) of this section any income tax or super tax becomes chargeable on and is paid by the person by whom the disposition was made, that person shall be entitled to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid, and for that purpose to require the Commissioners concerned to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(3) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of paragraph (b) or paragraph (c) of subsection (1) of this section have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or where there are two or more such persons shall be apportioned among those persons as the case may require.

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[67] Paragraph (a) and provisos thereto repealed, Act of 1938, Fifth Sched. See also Act of 1943, s. 20, 6th Sched., Part III, pp. 678, 680.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(4) Any income, which is deemed by virtue of this section to be the income of any person, shall be deemed to be the highest part of his income.

(5) In this section, unless the context otherwise requires—

The expression "child" includes step-child or illegitimate child;

The expression "disposition" includes any trust, covenant, agreement or arrangement.

21. With a view to preventing the avoidance of the payment of super-tax through the withholding from distribution of income of a company which would otherwise be distributed, it is hereby enacted as follows:—

(1) Where it appears to the Special Commissioners that any company to which this section applies has not, within a reasonable time after the end of any year or other period ending on any date subsequent to the fifth day of April, nineteen hundred and twenty-two, for which accounts have been made up, distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources for the said year or other period, the Commissioners may, by notice in writing to the company, direct that for purposes of assessment to super-tax, the said income of the company shall, for the year or other period specified in the notice, be deemed to be the income of the members, and the amount thereof shall be apportioned among the members, *and super-tax shall be assessed and charged under the provisions of this section in respect of the sum so apportioned after deducting in the case of each member any amount which has been distributed to him by the company in respect of the said year or period in such manner that the amount distributed falls to be included in the statement of total income to be made by that member for the purposes of super-tax.*[68]

Provided that, in determining whether any company has or has not distributed a reasonable part of its income as aforesaid, the Commissioners shall have regard not only to the current requirements of the company's business, but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

For[69] the purpose of this subsection any such sum as is hereinafter described shall be regarded as income available for distribution among the members of the company and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, that is to say:—

(a) Any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before the fourth day of August, nineteen hundred and fourteen—

(i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company; or

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt)

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[68] Words in *italics* added by Finance Act, 1927, s. 31 (2); see also Act of 1922, s. 18.

[69] The following paragraph is added by s. 31 (1) of the Finance Act, 1927, which also contains the proviso here printed at the end of the new paragraph.

issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property; *or*

(iv) *in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred otherwise than for adequate consideration.*[70]

(b) Any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction:

Provided that the . . . foregoing . . . paragraph shall not operate so as to make [this] section apply as respects any company unless it appears to the Special Commissioners, not only that income of the company has been or is to be expended or applied for one or more of the purposes mentioned in the said paragraph, but also that the company has not in fact distributed a reasonable part of its actual income in such a manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax.

For the purposes of this subsection share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—

(a) *it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon); or*

(b) *it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in the last foregoing paragraph or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration.*

References in this subsection to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.[71]

(2) Any super-tax chargeable under this section in respect of the amount of the income of the company apportioned to any member of the company, shall be assessed upon that member in the name of the company, and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts and any regulations made thereunder relating to super-tax assessments and the collection and recovery of super-tax shall, with any necessary modification, apply to super-tax assessments and to the collection and recovery of super-tax charged under this section.

(3) A notice of charge to super-tax under this section shall in the first instance be served on the member of the company on whom the tax is assessed, and if that member does not within twenty-eight days from the date of the notice elect to pay the tax a notice of charge shall be served on the company and the tax shall thereupon become payable by the company:

Provided that nothing in this subsection shall prejudice the right to recover from the company the super-tax charged in respect of any member who has elected as aforesaid but who fails to pay the tax by the first day of January in

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[70] Sub-paragraph (iv) added, Finance Act, 1936, s. 19 (4).

[71] Paras. in *italics* inserted, Finance Act, 1936, s. 19 (4).

the year next following[72] the year of assessment or within twenty-eight days of the date on which he so elected, whichever is later.

(4) Any undistributed income which has been assessed and charged to super-tax under this section shall, when subsequently distributed, be deemed not to form part of the total income from all sources for the purposes of super-tax of any individual entitled thereto.

Where a member of a company has been assessed to and has paid super-tax otherwise than under this section in respect of any income which has also been assessed and upon which super-tax has been paid under this section, he shall, on proof to the satisfaction of the special commissioners of the double assessment, be entitled to repayment of so much of the super-tax so paid by him as was attributable to the inclusion in his total income from all sources of the first-mentioned income.

(5) Where super-tax is charged under this section in respect of the income of a company for any year or other period, the Commissioners of Inland Revenue shall, on a certificate from the special commissioners that the super-tax has been accounted for, repay to the company the amount of any corporation profits tax paid by the company in respect of the corresponding accounting period or part thereof.

(6) *This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.*

For the purpose of this subsection—

A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply, or of two or more companies none of which is a company to which those provisions apply;

A company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up as aforesaid beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such year or other period been the subject of dealings on a stock exchange in the United Kingdom and the shares have been quoted in the official list of such a stock exchange.

The expression "company" means a company within the meaning of the Companies (Consolidation) Act, 1908.[73]

. . . . . .

(7) In this section the expression "member" shall include any person having a share or interest in the capital or profits or income of a company, and the expression "employee" shall not include any governing director, managing director, or director.

(8) The provisions contained in the First Schedule to this Act shall have effect as to the computation of the actual income from all sources of the company, the apportionment thereof amongst members of the company, and

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[72] Words inserted, "so far as relates to sur-tax," by Act of 1927, Fifth Sched., Part III.

[73] Words in *italics* substituted by Finance Act, 1927, s. 31 (3). Remainder of sub-s. 6 repealed, Finance Act, 1936, s. 35 (7), and Fourth Sched.; see s. 19 of that Act, p. 58. See also Act of 1937, s. 14 (1).

otherwise for the purpose of carrying into effect, and in connection with, this section . . .[74]

22.—(1) The special commissioners may, whether an assessment to super-tax has been made or not, require any individual who has been required to make a return of his total income for the purposes of super-tax to furnish to them within such time as they may prescribe, not being less than twenty-eight days, such particulars as to the several sources of his income and the amount arising from each source, and as to the nature and the amount of any deductions claimed to be allowed therefrom, as they consider necessary.

(2) If any person without reasonable excuse fails to furnish within the time prescribed any particulars required under this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues.

26.—(1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall be entitled on making a claim for the purpose to be repaid so much of the income tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to the satisfaction of the special commissioners to have been wholly, exclusively, and necessarily disbursed by him as expenses of management or supervision of those minerals in that year:

Provided that no repayment of tax shall be made—

(a) except on proof to the satisfaction of the special commissioners of payment of tax on the aggregate amount of the rent or royalties; or

(b) if, or to such extent as, the said expenses have been otherwise allowed as a deduction in computing income for the purposes of income tax.

(2) The provisions of subsection (2) of section thirty-three of the Income Tax Act, 1918, shall apply to claims under this section.

27. Allowances granted by the Minister of Pensions under a Royal Warrant, Order in Council, or order administered by him to widows of members of the naval, military, or air forces of the Crown in respect of their children shall not be reckoned in computing the income of such widows for any of the purposes of the Income Tax Acts.

28.—(1) Subsection (1) of section forty-seven of the Income Tax Act, 1918, which, as amended by section seven of the Savings Bank Act, 1920, grants relief from income tax in respect of any national savings certificates issued by the Treasury through the Post Office under which the purchaser, by virtue of an immediate payment of fifteen shillings and sixpence, becomes entitled after five years to receive the sum of one pound, shall apply to any such certificates so issued whether the price of issue of the certificates is fifteen shillings and sixpence or any other sum and whether the certificates mature for payment on the expiration of five years or any other period *and whether the sum payable on maturity of the certificate is one pound or any other sum.*[75]

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[74] Provisions applicable in cases of winding-up, etc. are enacted in sub-ss. (4), (5) and (6) of s. 31 of the Act of 1927, which see.

[75] Words added. Act of 1942, s. 30.

(2) All enactments giving relief from income tax in respect of the accumulated interest payable in respect of national savings certificates shall extend to the accumulated interest payable in respect of any Ulster savings certificates issued by the Government of Northern Ireland and held by persons resident and domiciled in Northern Ireland, whether issued for the same price and whether maturing for payment on the expiration of the same period as national savings certificates or not *and whether the sum payable on maturity is the same as in the case of national savings certificates or not.*[75]

29. In the computation of any profits or income for the purposes of assessment to income tax no deduction shall be allowed in respect of any interest paid on arrears of excess profits duty or munitions exchequer payments.

30. (*Residue payable to charity.*)[76]

31.—(1) Where, in pursuance of any public general Act of Parliament, superannuation allowances or gratuities are payable to individuals holding an office or employment on their retirement or to their legal personal representatives on their death, and such individuals are by any such Act required to make contributions towards the expenses of providing the allowances and gratuities, the sums so contributed by any such individual for any year may be deducted from the amount of his emoluments to be assessed to income tax for that year:

Provided that, where any such sums are to be repaid to any individual under the authority of any such Act as aforesaid, the person by or through whom the sums are to be repaid shall deduct from those sums an amount equal to the total amount of the income tax which would have been paid in respect of those sums if they had not been allowed as deductions under the authority of this section, and if those sums are repaid with any interest thereon, shall also deduct therefrom an amount equal to the total amount of the income tax which would have been paid in respect of that interest if it had actually been paid to the individual in the several years in respect of which it is paid, and the provisions of paragraph (2) of rule twenty-one of the General Rules shall apply in regard to the accounting for and recovery of the amounts so deducted.

(2) Any person having the custody of the books containing the assessments to income tax on any individual for the several years in respect of which sums are repayable to him as aforesaid shall, notwithstanding anything contained in any declaration made by that person in pursuance of section eighty-nine of the Income Tax Act, 1918, on application by the person by or through whom the sums are repayable, furnish to him such particulars as may be necessary to enable him to compute the appropriate amount of income tax to be deducted and paid over by him as aforesaid.

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PART V

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32. . . .

(2) This Act may be cited as the Finance Act, 1922.

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[75] Words added, Act of 1942, s. 20.

[76] Repealed, Finance Act, 1938, Fifth Sched.

SCHEDULES

FIRST SCHEDULE

1. A company which is aggrieved by any direction given under section twenty-one of this Act may appeal to the special commissioners against the direction by giving notice of appeal to the Clerk to the Commissioners within twenty-one days after the date of the notice, and the Commissioners shall hear and determine the appeal subject as herein provided, and the provisions of the Income Tax Acts relating to appeals against assessment shall, with any necessary modification, apply for the purposes of an appeal under this provision.

2. If either the company or the Commissioners of Inland Revenue are dissatisfied with the determination of the special commissioners on any appeal under the foregoing provisions of this schedule, they may, on giving notice to the Clerk to the special commissioners within twenty-one days after the determination, require the appeal to be reheard by the Board of Referees and the special commissioners shall transmit to the Board any document in their possession which was delivered to them for the purposes of the appeal.

The Board shall rehear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the special commissioners might have and exercise, and the determination of the Board thereon shall be final and conclusive:

Provided that section one hundred and forty-nine of the Income Tax Act, 1918 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the general or special commissioners under the said Act.

3. The provisions of *subsection* (7) *of section forty-two of the Finance Act*, 1927,[77] relating to the representation of the Crown on super-tax appeals shall, with the necessary modifications, apply to any appeal under this schedule.

4. The special commissioners may, at any time by notice in writing, require any company which appears to them to be a company to which section twenty-one of this Act applies, to furnish them with—

(a) a statement of the actual income of the company from all sources, together with a copy of the company's account for any year or other period for which the company's accounts have been made up and such particulars as the commissioners may reasonably require as to the income of the company and the manner in which the income has been dealt with; and

(b) a statement for the same period of the names and addresses and particulars of the respective interests of all members of the company.

5.—(a) Where the special commissioners have—

(i) issued a notice requiring any company to furnish them with particulars under paragraph 4 of this schedule as respects any year or other period; or

(ii) given a direction under subsection (1) of section twenty-one of this Act as respects any year or other period in relation to any

[77] Amendment made by Act of 1927, Fifth Sched., Part III, "so far as relates to super-tax."

company to which no such notice has been issued as respects that year or period;

the directors of the company, if they are of opinion that there has not been and will not be any avoidance of the payment of super-tax through failure to distribute to the members of the company a reasonable part of its income for that year or period, may make a statutory declaration to that effect stating the facts and circumstances upon which their opinion is based;

(b) In any case where such a statutory declaration as aforesaid is sent to the special commissioners within twenty-eight days of the issue of such a notice or the giving of such a direction as aforesaid the special commissioners shall not, unless they see reason to the contrary, take any further action in the matter;

(c) If in any such case the commissioners see reason to the contrary they shall send to the Board of Referees a certificate to that effect, together with the said statutory declaration, and shall at the same time transmit a copy of the certificate and of the statutory declaration to the Commissioners of Inland Revenue;

(d) The Commissioners of Inland Revenue may at any time within twenty-eight days after receiving the copy of the certificate and the copy of the statutory declaration submit to the Board of Referees a counter-statement with reference to the matter;

(e) The Board of Referees shall in any such case take into consideration the declaration, and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a *prima facie* case for proceeding in the matter;

(f) The determination of the Board of Referees under this paragraph shall be final and conclusive, and, where the Board of Referees determines that there is a *prima facie* case for proceeding, the notice or direction aforesaid shall have effect as if it had been issued or given on the date on which notice of the determination of the Board is given to the company.[78]

6. In computing the actual income from all sources of a company for any year or period, the income from any source shall be estimated in accordance with the provisions of the Income Tax Acts relating to the computation of income from that source; except that the income shall be computed by reference to the income for such year or period as aforesaid and not according to an average of more than one year or by reference to any year or period other than such year or period as aforesaid.

7. If any company fails or refuses on being so required in accordance with the provisions of this schedule to furnish a statement of actual income from all sources or renders a statement with which the special commissioners are not satisfied, the commissioners may make an estimate of that income to the best of their judgment.

8. The apportionment of the actual income from all sources of the company shall be made by the special commissioners in accordance with the respective interests of the members, and the income as apportioned to each member *so far as assessable and chargeable to super-tax under section twenty-one of this Act*[79] shall, for the purposes of super-tax, be deemed to represent . . .[79] income from his interest in the company for the year or other period and shall be included in the statement of his total income or in an amended statement of total income which the special commissioners are hereby authorised to require and shall be deemed to be the highest part of that income.

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[78] Paras. 5 and 9 are here printed as substituted by s. 31 (7) and (8) of the Act of 1927.

[79] Amendments made by Act of 1927, Fifth Sched., Part III.

9. The income apportioned to a member of a company so far as assessable and chargeable to super-tax under section twenty-one of this Act shall for the purposes of that tax be deemed to have been received by him on the date to which the accounts of the company for the year or period were made up or, if an application in that behalf is made by the company to the special commissioners at any time within the period limited by this Schedule for giving notice of appeal against the direction to the special commissioners, on such date as those commissioners determine to be just, having regard to the dates on which distributions of income have been made by the company, and so as to avoid, as far as possible, the inclusion for the purposes of super-tax for any year of income referable to more than one year.[80]

10. Notice of any apportionment made by the special commissioners shall be given by serving on the company a statement showing the amount of the actual income from all sources adopted by them for the purposes of section twenty-one of this Act, and either the amount apportioned to each member or the amount apportioned to each class of shares, as they think fit.

A company which is aggrieved by any notice of apportionment shall be entitled to appeal to the special commissioners on giving notice to their clerk within twenty-one days after the date of the notice, and those commissioners shall hear and determine the appeal and all the provisions of the Income Tax Acts and any regulations made thereunder relating to appeals against assessments and to cases to be stated for the opinion of the High Court shall, with any necessary modification, apply for the purposes of any such appeal.

11. Any person in whose name any shares of a company are registered shall, if required by notice in writing by the special commissioners, state whether or not he is the beneficial owner of those shares, and if not the beneficial owner of those shares or any of them shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.

If any person on being so required neglects or fails to comply with the notice within the time limited by the notice, he shall be liable to a penalty of twice the amount of super-tax that would be chargeable at the highest rate in respect of the amount of the income apportioned to such shares.

12. In this schedule the expression " Board of Referees " means the Board of Referees for the purposes of Rule 6 of the rules applicable to Cases I and II of Schedule D.

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THE FINANCE ACT, 1923
(13 & 14 GEO. 5, c. 14)

[18th July, 1923]

PART II—INCOME TAX

. . . . . .

16.—(1) Where the profits of an insurance company in respect of its life assurance business are for the purposes of the Income Tax Acts computed in accordance with the rules applicable to Case I of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on

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[80] Paras. 5 and 9 are here printed as substituted by s. 31 (7) and (8) of the Act of 1927.

behalf of, policy-holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy-holders or annuitants cease at any time to be so reserved and are not allocated to or expended on behalf of policy-holders or annuitants, those profits shall be treated as profits of the company for the year in which they ceased to be so reserved.

(2) Where an assurance company carrying on the business of life assurance claims repayment under section thirty-three of the Income Tax Act, 1918, in respect of sums disbursed as expenses of management there shall, in addition to the amount directed by proviso (b) of subsection (1) of the said section to be deducted from the amount treated as expenses of management, be deducted therefrom the amount of any profits arising from the granting of annuities on human life.

For the purposes of this subsection profits arising from the granting of annuities on human life shall be computed in accordance with the rules applicable to Case I of Schedule D:

Provided that in making any such computation—

(a) The provisions of subsection (1) of this section shall apply with the necessary modifications and in particular with the omission therefrom of all references to policy-holders; and

(b) No deduction shall be allowed in respect of any expenses of management in respect of which repayment of tax may be claimed under the said section thirty-three; and

(c) There may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen in connection with the granting of annuities on human life in any previous year during which this section was in operation.

(3) Where an assurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each such class shall for the purposes of the Income Tax Acts be treated as though it were a separate business, and section thirty-three of the Income Tax Act, 1918, shall apply separately to each such class of business.

(4) For the purpose of removing doubts it is hereby declared that a mutual assurance company carrying on life assurance business is entitled to relief under section thirty-three of the Income Tax Act, 1918, in the same manner and to the same extent as if the business of the company were the business of a proprietary assurance company, and the provisions of this section shall be construed accordingly.

17.—(1) Where any emoluments, pension or annuity[61] are or is payable in Great Britain or Northern Ireland, by or through any public department, officer, or agent of the Government of any part of His Majesty's Dominions, including any territory under His Majesty's protection, but otherwise than out of the public revenue of Great Britain and Northern Ireland or the public revenue of Northern Ireland, to a person who is or has been employed in the service of the Crown outside Great Britain and Northern Ireland in respect of that service, or any pension or annuity is so payable to the widow, child, relative or dependant of any such person as aforesaid, and the person in receipt of the emoluments, pension or annuity is chargeable to income tax as a person resident in Great Britain or Northern Ireland, the emoluments, pension or annuity shall be chargeable to income tax under Schedule E, and the provisions of the Income Tax Acts relating to the deduction, assessment,

[61] See Act of 1932, s. 17 (2).

and collection of tax in respect of official pay payable at a public office shall apply accordingly with any necessary modifications.

. . . . . .

18.—(1) If His Majesty in Council is pleased to declare—

(a) that any profits or gains arising from the business of shipping *or from the business of air transport*[82] which are chargeable to British income tax are also chargeable to income tax payable under the law in force in any foreign state;[83] and

(b) that arrangements, as specified in the declaration, have been made with the government of that foreign state[83] with a view to the granting of relief in cases where such profits and gains are chargeable both to British income tax and to the income tax payable in the foreign[83] state;

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from British income tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the foreign state,[83] have the effect of law in the foreign state.[83]

(2) Any declaration made by His Majesty in Council under this section shall be laid before the Commons House of Parliament as soon as may be after it is made, and, if an address is presented to His Majesty by that House within twenty-one days on which that House has sat next after the declaration is laid before it praying that the declaration may be revoked, His Majesty in Council may revoke the declaration, and the arrangements specified in the declaration shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new declaration.

(3) The obligation as to secrecy imposed by any enactment with regard to income tax shall not prevent the disclosure to any authorised officer of the foreign state[83] mentioned in the declaration of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

(4) In this section the expression "business of shipping" means the business carried on by an owner of ships, *and the expression "business of air transport" means the business carried on by an owner of aircraft*,[82] and for the purposes of this definition the expression "owner" includes any charterer.

19.—(1) Subject to the provisions of this section, income arising from any office or employment to which this section applies shall be exempt from income tax (including super-tax), and no account shall be taken of any such income in estimating the amount of income for any of the purposes of the Income Tax Acts for the year 1923—24 or any succeeding year of assessment.

(2) The offices and employments to which this section applies are the following, that is to say:—

The office of High Commissioner and the office of Agent-General:

The employment in Great Britain or Northern Ireland as a member of the personal staff of any High Commissioner or Agent-General, or as an official agent for British India or any self-governing dominion, for any state or province of a self-governing dominion, or for any self-governing colony of a person certified by the High Commissioner or Agent-

[82] Words inserted, No. 1 Act of 1931, s. 9.
[83] Extended to British Dominions, and protected and mandate territories: Act of 1934, s. 31.

General, as the case may be, to be ordinarily resident outside Great Britain and Northern Ireland and to be resident in Great Britain or Northern Ireland solely for the purpose of the performance of his duties as such member or official agent.

(3) Nothing in this section shall operate to grant relief from income tax (including super-tax) in respect of income arising from the employment of any person in any trade, business, or other undertaking carried on for the purposes of profit.

(4) In this section—

The expression "High Commissioner" means the High Commissioner for British India or for any of the self-governing dominions;

The expression "Agent-General" means the Agent-General for any state or province of a self-governing dominion or for any self-governing colony;

The expression "self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State or Newfoundland;

The expression "self-governing colony" means any colony certified by a Secretary of State to be a self-governing colony.

23.—(1) Proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts in connection with or in relation to the income tax (including super-tax) . . . may be commenced at any time within six years next after the date on which it was incurred . .

24.—(1) If any person who has paid tax charged under an assessment to income tax made for any year under Schedule D, or according to the rules applicable to that schedule, alleges that the assessment was excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may, at any time not later than *six*[84] years after the end of the year of assessment within which the assessment was made, make an application in writing to the Commissioners of Inland Revenue for relief.

(2) On receiving any such application the Commissioners of Inland Revenue shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment such relief (including any consequential relief from super-tax) in respect of the error or mistake as is reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return or statement was made.

(3) In determining any application under this section the Commissioners of Inland Revenue shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to income tax or super-tax of any part of the profits or income of the applicant, and for this purpose the Commissioners may take into consideration the liability of the applicant and assessments made on him in respect of other years.

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[84] Extended to six years by Act of 1926, s. 27. The section is applied to surtax by Act of 1927, s. 42 (3), and to tax under Sched. E by s. 45 (6).

(4) Any person who is aggrieved by the determination of the Commissioners of Inland Revenue on an application made by him under this section may, on giving notice in writing to those Commissioners within twenty-one days after the notification to him of their determination, appeal to the special commissioners.

(5) The special commissioners shall thereupon hear and determine the appeal in accordance with the principles to be followed by the Commissioners of Inland Revenue in determining applications under this section and, subject thereto, in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications:

Provided that neither the appellant nor the Commissioners of Inland Revenue shall be entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income.

26.—(1) Where by virtue of any enactment[25] the annual value of any property which has been adopted for the purpose either of income tax under Schedule A, or of income tax under Schedule B, . . . for any year is to be taken as the annual value of that property for the same purpose for any subsequent year, any occupier of any property, or any owner or other person in receipt of the rent of any property, who is aggrieved by the amount so to be taken as the annual value of the property shall be entitled to appeal to the general commissioners against an assessment to income tax under Schedule A or under Schedule B, . . . in respect of that property for that subsequent year, and the general commissioners shall hear and determine the appeal and confirm or amend the assessment, as the case may require, in the same manner as if the annual value of the property so to be taken were the annual value determined for that subsequent year in accordance with the provisions of the Income Tax Acts or of the Acts relating to inhabited house duty, as the case may be.

(2) On any appeal against an assessment of annual value for the purposes of income tax under Schedule A . . . or against an assessment to income tax under Schedule A or under Schedule B, . . . the general commissioners shall permit any agent appointed by the appellant to plead before them on his behalf.

29.—(1) Subject to the provisions of this section an assessment, an additional first assessment or a surcharge in respect of income tax chargeable for the year 1920—21 or any subsequent year of assessment may be amended or made, as the case may be, under section one hundred and twenty-five of the Income Tax Act, 1918, or section one hundred and twenty-six of that Act, at any time not later than six years after the end of the year to which the assessment relates or the year for which the person liable to income tax ought to have been charged.

(3) For the purposes of the charges of income tax or super-tax on the executors or administrators of a deceased person in respect of the profits or gains or income which arose or accrued to him before his death, the time allowed by the foregoing provisions of this section shall not extend beyond

[25] See, *e.g.*, Act of 1930, s. 27 (3).

the end of the third year next following the year of assessment in which the deceased person died.

30.—(1), (2) . . .[86]

(3) Any provision of the Income Tax Acts which authorises a claim for repayment of income tax to be made at the end of any year of assessment or within a specified period of less than one year after the end of any year of assessment shall be amended so as to authorise the making of the claim within a period of one year after the end of the year of assessment.

PART IV

39. . . .

Part II of this Act shall be construed together with the Income Tax Acts and the Acts relating to inhabited house duty.

(2) This Act may be cited as the Finance Act, 1923.

(4) The enactments set out in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

THE FINANCE ACT, 1924
(14 & 15 GEO. 5, c. 21)

[1st August, 1924]

PART II—INCOME TAX

. . . . . .

23.—(1) Any profits or gains arising to an agricultural society from an exhibition or show held for the purposes of the society shall, if they are applied solely to the purposes of the society, be exempt from income tax.

(2) The expression "agricultural society" in this section means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, live-stock breeding or forestry.

27.—(1) Any person who is aggrieved by the decision of the Commissioners of Inland Revenue on any question to which this section applies may, by notice in writing to that effect given to the Commissioners of Inland Revenue within three months from the date on which notice of the decision is given to him, make an application to have his claim for relief heard and determined by the special commissioners.

(2) Where any application is made under this section, the special commissioners shall hear and determine the claim in like manner as an appeal made to them against an assessment under Schedule D, and all the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

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[86] These sub-sections extend to six years the times limited by s. 41 of the Act of 1918, r. 5 of No. V of Sched. A, and s. 25 of the Act of 1918; and those provisions are printed accordingly above.

(3) This section applies to the following questions:—

(a) any question as to ordinary residence arising under subsection (1) of section forty-six of the Income Tax Act, 1918:

(b) any question as to domicile or ordinary residence arising under paragraph (a) of Rule 2 of the Rules applicable to Case IV of Schedule D, or under paragraph (a) of Rule 3 of the Rules applicable to Case V of Schedule D:

(c) any question as to residence arising—

(i) under paragraph (d) of Rule 2 of the General Rules applicable to Schedule C; or

(ii) under Rule 7 of the Miscellaneous Rules applicable to Schedule D in connection with a claim for repayment of income tax made to the Commissioners of Inland Revenue by the person owning the stocks, funds, shares or securities and entitled to the income arising therefrom, or entitled to the annuities, pensions or other annual sums, as the case may be, and from whose income a deduction has been made on account of the income tax assessed and charged under the said Rule.

28. For the purposes of any assessment to income tax for any year which is made on or after, or has not become final and conclusive before, the thirtieth day of April, nineteen hundred and twenty-four, or of any deduction on account of income tax for any year, any increase of or addition to any salary, remuneration, pension, annuity or stipend by way of war bonus, and any other like temporary increase or addition granted in order to meet the rise in the cost of living, shall be, and shall be deemed always to have been, chargeable to tax as salary, remuneration, pension, annuity or stipend, as the case may be, and not as perquisites under Rule 4 of the Rules applicable to Schedule E or under the fourth of the Rules for charging the duties under Schedule E in section one hundred and forty-six of the Income Tax Act, 1842.

30.—(1) Where the amount of any income tax for the time being due and payable under any assessment is less than fifty pounds, the tax may, without prejudice to any other remedy . . .[86] be recoverable summarily as a civil debt, and section twenty-nine of the Finance Act, 1921 . . .[87] shall apply in the case of proceedings under this section as it applies in the case of proceedings under that section and as if references therein to wages included references to salaries, fees and other emoluments.

(2) Proceedings under this section shall be commenced in the name of a collector of taxes.

31. Section eighteen of the Finance Act, 1923 (which makes provision for the granting of relief in cases where profits arising from the business of shipping are chargeable both to British income tax and to income tax payable under the law in force in any foreign state), shall have effect as if references therein to a foreign state included references to any British Dominion, any territory which is under His Majesty's protection, and any territory in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

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[86] Words repealed, Employments Act, 1943, s. 5 (3), see proviso, p. 683, and 3rd Sched.

[87] See p. 505.

33.—(1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, after the thirtieth day of November, nineteen hundred and twenty-four, in payment of any dividend or interest distributed by any company, being a company within the meaning of the Companies (Consolidation) Act, 1908, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—

(a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and

(b) the rate[88a] and the amount of income tax appropriate to such gross amount; and

(c) the net amount actually paid.

(2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty of ten pounds:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed one hundred pounds.

PART III

41. . . .

Part II of this Act shall be construed together with the Income Tax Acts.

(2) This Act may be cited as the Finance Act, 1924

THE FINANCE ACT, 1925
(15 & 16 GEO. 5, c. 36)

[30th June, 1925]

PART II—INCOME TAX

. . . . .

15.[89]—(1) An individual who makes in the manner prescribed by the Income Tax Acts a claim in that behalf and who makes a return in the prescribed form of his total income shall, for the purpose of ascertaining the amount of his assessable income for the purpose of income tax, be allowed a deduction from the amount of his earned income of a sum equal to *one-tenth* of the amount of that income, but not exceeding in the case of any individual *one hundred and fifty* pounds.

(2) Any individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf, makes a return in the prescribed form of his total income, and proves that at the commencement of the year of assessment either he or, in the case of a married man, his wife living with him was of the age of sixty-five years or upwards and that his total income for the year of assessment does not exceed five hundred pounds, shall, for the purpose of

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[88a] See also No. 2 Act of 1945, s. 52 (2) (b).

[89] See Act of 1927, s. 40 (1), and Fifth Sched., Part I. Amount substituted, Act of 1941, s. 6 (2); but in sub-s. 2 "*three quarters*" is substituted for "*one half*" by No. 2 Act of 1940, s. 3 (2).

ascertaining the amount of his assessable income for the purpose of income tax, be allowed a deduction from the amount of his total income of a sum equal to *one-tenth* of the amount of that income, and any individual who would, but for the fact that his total income exceeds five hundred pounds, be entitled to an allowance as aforesaid shall be entitled to have the amount of the income tax payable in respect of his total income reduced, where necessary, so as not to exceed a sum equal to the aggregate of the two following amounts, that is to say, the amount of the tax which would have been payable if his total income had amounted to, but had not exceeded, five hundred pounds, and *three-quarters* of the amount by which his total income exceeds five hundred pounds:

Provided that any deduction or relief under this subsection shall be in substitution for and not in addition to the deduction under subsection (1) of this section.

(3) The provisions of sections twenty-seven, twenty-eight, twenty-nine and thirty of the Income Tax Act, 1918, and of paragraph XVII of the Fifth Schedule to that Act shall apply for the purpose of claims under this section, and references in any enactment to section sixteen of the Finance Act, 1920, or to the deduction of any allowance in respect of earned income shall be construed as references to this section and to the allowances and relief thereunder:

Provided that, where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable on the incomes of the husband and wife respectively as if they were not married, the benefit of any allowance or relief under the last preceding subsection shall be apportioned between the husband and wife according to the amounts of their respective total incomes.

. . . . . .

(5) In this section the expressions "earned income" and "total income" mean respectively earned income as estimated in accordance with the provisions of the Income Tax Acts and total income from all sources as so estimated.

16. Rules 6 and 7 of Cases I and II of Schedule D (which provide, in connection with the charge to income tax under that Schedule of the profits or gains of a trade, for the allowance of deductions in respect of the wear and tear of machinery and plant and in respect of expenses incurred in replacing obsolete machinery or plant) shall apply as if references in those Rules to the profits or gains of a trade included references to the profits or gains, whether assessable under Schedule D or otherwise, of a profession, employment, vocation or office, and, where they are ascertained otherwise than by reference to assessable value, to the profits or gains arising from the occupation of lands, including woodlands, and in relation to profits or gains assessable under some Schedule other than Schedule D as if the provisions of the said Rules were applicable to the tax under that other Schedule:

Provided that—

(i) where the profits or gains are not assessed under Schedule D, the powers of the Additional Commissioners under paragraph (4) of the said Rule 6 may be exercised by the General Commissioners; and

(ii) in the case of a claim for the allowance of a deduction for wear and tear in any year from the profits or gains arising to any person from the occupation of lands, including woodlands, the appropriate deduction for wear and tear shall, for the purposes of paragraph (6)

of the said Rule 6, be deemed to have been allowed for any previous year for which profits or gains arising to that person from the occupation of lands, including woodlands, were determined by reference to assessable value.

17.—(1) Where sales or transactions are carried out on behalf of a non-resident person through a broker in the ordinary course of his business as such, and the broker satisfies the conditions required to be satisfied for the purposes of this section, then, notwithstanding that the broker is a person who acts regularly for the non-resident person as such broker, the non-resident person shall not be chargeable to income tax in the name of that broker in respect of profits or gains arising from those sales or transactions.

(2) The conditions required to be satisfied for the purposes of this section are that the broker must be a person carrying on bona fide the business of a broker in Great Britain or Northern Ireland, and that he must receive in respect of the business of the non-resident person which is transacted through him remuneration at a rate not less than that customary in the class of business in question.

(3) In this section the expression "broker" includes a general commission agent.

(4) Rule 10 of the General Rules shall have effect subject to the provisions of this section.

18. . . [90]

19.—(1) Any claim for—

(a) exemption from income tax under the provisions of section thirty-seven of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921 (which sections provide respectively for exemption in respect of certain income of charities and for exemption in respect of lands owned and occupied by charities and of profits of trades carried on by beneficiaries of charities); or

(b) repayment of income tax under section thirty-six of the Income Tax Act, 1918 (which provides for the repayment in certain cases of income tax in respect of interest paid to banks, discount houses, etc., out of taxed profits);

shall be made to the Commissioners of Inland Revenue in such form as they may prescribe, and the said Commissioners shall on proof of the facts to their satisfaction allow the claim accordingly.[91]

(2) Any person who is aggrieved by the decision of the said Commissioners on a claim made by him as aforesaid may, by notice in writing to that effect given to the said Commissioners within twenty-one days from the date on which notice of the decision is given to him, make an application to have his claim for exemption or repayment, as the case may be, heard and determined by the Special Commissioners.

(3) Where any such application as aforesaid is made, the Special Commissioners shall hear and determine the claim in like manner as an appeal made to them against an assessment under Schedule D, and all the provisions of the Income Tax Acts relating to such an appeal (including the provisions

[90] Repealed, Employments Act, 1948, s. 5 (3).

[91] See Act of 1926, s. 20, below.

relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications. . . .

20.—(1) Where under or by virtue of the Trading with the Enemy Acts, 1914 to 1918, or any Order in Council made under any Treaty of Peace Act, any securities to which this section applies became vested in any custodian or administrator of enemy property, any question of liability to income tax in respect of the dividends or interest on the securities shall be determined as if the securities had not become so vested.

(2) The securities to which this section applies are those classes of securities, stocks, funds or shares the dividends or interest whereon are chargeable to income tax under Schedule C or under Rule 7 of the Miscellaneous Rules applicable to Schedule D, or were chargeable to income tax under any enactments replaced by the said Schedule C or the said Rule 7 and for the purposes of this section the expression "Treaty of Peace Act" means any Act for carrying into effect any treaty of peace made after the late war between His Majesty and any other power.

. . . . . .

PART IV—GENERAL

25.—(1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions which is outside Great Britain and Northern Ireland, that Government shall, in respect of the trade or business and of all operations in connection therewith, all property occupied in Great Britain or Northern Ireland and all goods owned in Great Britain or Northern Ireland for the purposes thereof, and all income arising in connection therewith, be liable, in the same manner as in the like case any other person would be, to all taxation for the time being in force in Great Britain or Northern Ireland.

(2) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

(3) Nothing in this section shall—

(a) affect the immunity of any such Government as aforesaid from taxation in respect of any income or property to which subsection (1) of this section does not apply; or

(b) be taken to prejudice the question of any liability on the part of any such Government in respect of any period before the commencement of this Act to taxation in respect of the matters mentioned in subsection (1).

26. A High Commissioner or Agent-General within the meaning of section nineteen of the Finance Act, 1923 (which exempts from income tax the salaries of High Commissioners, Agents-General and their staff), who is resident in Great Britain or Northern Ireland shall be entitled to the same immunity from income tax (including super-tax) and land tax as that to which an accredited minister of a foreign state so resident is entitled, whether by virtue of any Act or otherwise, and any person having or exercising any employment to which the said section nineteen applies shall be entitled to the same immunity from income tax (including super-tax) and land tax as that to which a member of the staff of an accredited minister of a foreign state is entitled, whether by virtue of any Act or otherwise.

. . . . . .

21. . . .

(2) Part II of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(4) This Act may be cited as the Finance Act, 1925.

. . . . . .

THE FINANCE ACT, 1926
(16 & 17 GEO. 5, c. 22)

[4th August, 1926]

PART III—INCOME TAX

Charge of Tax and Miscellaneous

. . . . . .

20. The provisions of section nineteen of the Finance Act, 1925, prescribing the procedure with respect to the making of certain claims and with respect to applications to have such claims determined by the Special Commissioners, shall apply to claims which an individual is entitled to make by virtue of the proviso to subsection (1) of section twenty-four of the Finance Act, 1920 (which proviso exempts from the provisions of the said section twenty-four individuals who satisfy the Commissioners of Inland Revenue with respect to certain matters), in the same manner as they apply to the claims mentioned in the said section nineteen, but with the substitution in sub-section (2) thereof of three months for twenty-one days.

22.—(1) Where it is provided by the Income Tax Acts that income tax in respect of profits or gains or income from any source or in respect of the property in lands, tenements, hereditaments or heritages is to be computed by reference to the amount of the profits or gains or income of some period preceding the year of assessment, then, notwithstanding that no profits or gains or income arise from that source or that property for or within the year of assessment, income tax as so computed shall be charged for that year, and section one of the Income Tax Act, 1918, shall be construed and have effect accordingly, . . .

23.—(1) The Agreement made the fourteenth day of April, nineteen hundred and twenty-six, between the British Government and the Government of the Irish Free State in respect of double income tax (which Agreement is set out in Part I of the Second Schedule to this Act) is hereby confirmed, and shall have effect, with respect to exemption or relief to be granted from British income tax and super-tax, for the year 1926—27 and any subsequent year, provided that, with respect to exemption or relief to be granted from Irish Free State income tax and super-tax, it has effect for that year by virtue of an Act of the Legislature of the Irish Free State.

(2) For the purpose of giving effect to the said Agreement, the Income Tax Acts in relation to persons resident in Great Britain or Northern Ireland, whether or not also resident in the Irish Free State, and to persons intrusted with payment to persons so resident, and in relation to claims by persons resident in the Irish Free State, shall for any year for which the said agreement is in force have effect subject to the modifications set forth in Part II of the said Second Schedule.

25.—(1) In the case of an appeal against an assessment made under Schedule D or according to the rules applicable to that Schedule, the appellant shall in the notice of appeal specify the grounds of the appeal:

Provided that, if on the hearing of the appeal the appellant desires to go into any ground of appeal which was not specified in the notice and the omission of that ground from the notice was, in the opinion of the Commissioners hearing the appeal, not wilful or unreasonable, those Commissioners shall not, by reason of anything in this subsection, be precluded from allowing the appellant to go into that ground or taking it into their consideration.

(2) . . .[92]

Part IV—Income Tax

Basis of Assessment

28. Income tax in respect of the property in the lands, tenements, hereditaments or heritages mentioned in the first column of the Table contained in the Third Schedule to this Act shall cease to be chargeable under Schedule A, and shall become chargeable under the Case of Schedule D mentioned in the second column of the said Table, and the Rules applicable to each such Case, including the provisions of this Act amending those Rules, shall apply accordingly, but subject to the provisions contained in the third column of the said Table:

Provided that sections thirty-seven, thirty-eight and thirty-nine of the Income Tax Act, 1918, and section thirty of the Finance Act, 1921 (which provide for giving relief from income tax to certain charities, friendly societies and other bodies), shall be construed as if any income tax chargeable by virtue of this section under Schedule D instead of under Schedule A had remained chargeable under Schedule A.

29.—(1) Such enactments in the Income Tax Acts as provide that income tax under Schedule D shall in certain cases be computed on the full amount of the balance of the profits or gains, or on the full amount of the income, upon an average of three years, and so much of Rules 1 and 2 of the Rules applicable to Case IV of Schedule D as provides that income tax under that Case shall be computed on the full amount of the income which arises, or which has been or will be received, in the year of assessment, shall cease to have effect, and any income tax in respect of profits or gains or income chargeable under Case I, Case II, Case IV, or Case V of Schedule D which would but for the foregoing provisions of this section have been computed as aforesaid shall be computed, subject to the provisions of this Part of this Act and subject as hereinafter provided, on the full amount of the profits or gains or income of the year preceding the year of assessment:[93]

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[92] See Act of 1942, Tenth Sched., para. 4 (2).

[93] See Act of 1927, s. 23, below.

Provided that—

(a) . . .[94]

(b) In the case of income tax chargeable under Case IV or Case V of Schedule D—

(i) income tax shall be computed, as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year:

(ii) where the income first arose on some day in the year preceding the year of assessment other than the sixth day of April, income tax shall be computed on the income of the year of assessment:

(iii) where the income first arose on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, the person charged shall be entitled, on giving notice in writing to the surveyor within twelve months after the end of the year of assessment, to be charged on the amount of the income of that year, and if the tax charged has been paid, any tax overpaid shall be repaid:

(iv) references in this proviso to income which arises or which arose shall, in cases where income tax is to be computed by reference to the amount of income received in Great Britain or Northern Ireland, be construed as references to income which is or was so received.

(2) The foregoing provisions of this section shall not apply for the purposes of the computation of profits or gains chargeable under Case VI of Schedule D or according to the Rules applicable to that Case, but Rule 2 of those Rules shall be amended so as to provide that the computation of profits or gains so chargeable shall in no case be made according to an average of a period greater than one year.

(3) If any person who for the year 1926—27 was assessed and charged under Schedule D or according to the Rules applicable to that Schedule in respect of profits or gains or income arising from any source upon an average of a period of three years or more proves that the profits or gains or income of either of the first two of the three years upon the average of which he would, but for the provisions of this section, have been charged for the year 1927—28 were less than the profits or gains or income for one year upon an average of the six years preceding those three years, or, if he was not in possession of the source of the profits or gains or income during the six years aforesaid, upon an average of the less period preceding the said three years during which he was so in possession, he shall, on giving notice in writing to the surveyor not later than the fifth day of October, nineteen hundred and twenty-seven, that he desires so to be charged, be charged to tax for both the years 1927—28 and 1928—29 in respect of the profits or gains or income arising from that source on the amount on which he would have been charged if this section had not passed:

Provided that for the purpose of the foregoing provision a person shall be treated as having been in possession of the source of any profits or gains or income during any year if during that year he was in possession of the source on his own account or the source was in the possession of a partnership of which he was a partner.

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[94] Repealed, Finance Act, 1930, s. 53; Third Sched., Part IV.

This subsection shall apply to persons in partnership as it applies to a person, and persons in partnership shall be deemed to have been in possession of the source of any profits or gains or income during any year if any of them was during that year in possession of the source on his own account or the source was in the possession of a partnership of which he was a partner.

30. All profits or income in respect of which any person is chargeable either under Rule 1 of the Rules applicable to Case III of Schedule D, or under Case IV of Schedule D or under Case V of Schedule D may respectively be assessed and charged in one sum:

Provided that—

(i) If in any year of assessment any person charged or chargeable in respect of any such profits or income as aforesaid ceases to possess any particular source of any such profits or income or any part of any such source, income tax in respect of the profits or income from that source or that part shall be computed separately, and the provisions of the section in this Part of this Act which relates to the discontinuance of a trade, profession or vocation, shall, subject to the necessary modifications, apply in any such case as if the cesser of the possession of the source or part were the discontinuance of a trade:

(ii) If in any year of assessment any person acquires a new source of any such profits or income or an addition to any source of any such profits or income, income tax in respect of the profits or income from that source or from the addition to that source shall be computed separately, and in the case of profits or income chargeable under Rule 1 of the Rules applicable to Case III the provisions of paragraph (1) of Rule 2 of those Rules shall apply, and in the case of profits or income chargeable under Case IV or Case V of Schedule D the provisions of proviso (b) to subsection (1) of the last preceding section of this Act shall apply:

(iii) Where any income in respect of which any person has previously been charged or chargeable under Case IV or Case V of Schedule D becomes at any time chargeable to tax by deduction under the provisions of Rule 7 of the Miscellaneous Rules applicable to Schedule D, the provisions of paragraph (i) of this proviso shall apply as if that person had at the time aforesaid ceased to possess the security or possession from which the income arises:

(iv) Where income arising to any person from any security or possession in any place out of Great Britain and Northern Ireland ceases at any time to be chargeable to income tax by deduction under the provisions of Rule 7 of the Miscellaneous Rules applicable to Schedule D, the provisions of paragraph (ii) of this proviso shall apply as if that security or possession were a new source of income acquired by that person at that time.

31.—(1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then, notwithstanding anything in this Part of this Act—

(a) the person charged or chargeable with tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the sixth day of April in that year and ending on the date of the discontinuance, subject to any deduction or set-off

to which he may be entitled under the section of this Part of this Act which provides for relief in respect of certain losses or under Rule 13 of the Rules applicable to Cases I and II of Schedule D, and, if he has been charged otherwise than in accordance with this provision, any tax overpaid shall be repaid, or an additional assessment may be made upon him, as the case may require;

(b) if the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year, or would have been charged if no such deduction or set-off as aforesaid had been allowed, an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of the profits or gains of the said year ending on the fifth day of April, subject to any such deduction or set-off as aforesaid to which he may be entitled.

(2) In the case of the death of a person who, if he had not died, would, under the provisions of this section, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

33.—(1) Where a person has in any trade, profession or vocation carried on by him, either solely or in partnership, sustained a loss (to be computed in like manner as profits or gains under the Rules applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given under section thirty-four of the Income Tax Act, 1918 (which relates to relief in respect of certain losses), or under Rule 13 of the Rules applicable to Cases I and II of Schedule D (which provides for the setting-off of losses against profits or gains in a distinct trade), or under any other provision of the Income Tax Acts, he may claim that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set-off against the amount of profits or gains on which he is assessed under Schedule D in respect of that trade, profession or vocation for the six following years of assessment:[95]

Provided that in so far as relief in respect of any loss has been given to any person under this section that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(2) In the application of this section to a loss sustained by a partner in a partnership, the expression "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed under Schedule D in respect of the trade, profession or vocation as he would be required under the Income Tax Acts to include in a return of his total income for that year.

(3) Any relief under this section shall be given as far as possible from the first subsequent assessment for any year within the said six following years, and so far as it cannot be so given then from the next such assessment and so on.[95]

(4) Where a loss is sustained—

(a) by a person in the occupation of woodlands who, if he had made a profit, would, by reason of his election under Rule 7 of the Rules applicable to Schedule B, have been chargeable for the succeeding

[95] See Act of 1922, s. 19; No. 2 Act of 1945, s. 22.

year to tax under Schedule D computed on the amount of that profit; . . .

this section shall apply so as to give relief in respect of that loss in the same manner and to the same extent as if it were a loss sustained in a trade:[96]

. . . . . .

34.—(1) Where, in the case of any trade, profession or vocation, or of the occupation of any land occupied solely or mainly for the purposes of husbandry, or of the occupation of any woodlands, an account has or accounts have been made up to a date or dates within the period of three years immediately preceding the year of assessment—

(a) if an account was made up to date within the year preceding the year of assessment, and that account was the only account made up to a date in that year and was for a period of one year beginning either at the commencement of the trade, profession, vocation or occupation, or at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment;

(b) in any case to which the provisions of paragraph (a) do not apply the Commissioners of Inland Revenue shall decide what period of twelve months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.[97]

(2) Where the Commissioners of Inland Revenue have given a decision under paragraph (b) of the preceding subsection and it appears to them that in consequence thereof the tax for the last preceding year of assessment (not being a year prior to the year 1927—28) in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give directions to that effect and an assessment or additional assessment or repayment of tax shall be made accordingly.

(3) An appeal shall lie against any assessment or additional assessment or in respect of any repayment of tax under subsection (2) of this section, and any such appeal shall be made to the General or Special Commissioners who shall consider the circumstances and grant such relief, if any, as is just, and their determination shall be final and conclusive, subject to the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court.

(4) In the case of the death of a person who, if he had not died, would, under the provisions of this section, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

35.—(1) Where in the case of any profits or gains chargeable under Case I, Case II, Rule 4 of Case III or Case VI of Schedule D it is necessary, in order to arrive at the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses

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[96] Para. (b) and proviso repealed, Act of 1942, s. 49, and Twelfth Sched.

[97] Sub-s. 1 substituted, Finance Act, 1930, s. 14.

for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation:

Provided that nothing in this section shall be construed as limiting the power of the general commissioners with respect to the adjustment of an assessment under Rule 9 of the Rules applicable to Cases I and II of Schedule D.

(2) Any apportionment under this section shall be made in proportion to the number of months or fractions of months in the respective periods.

36.—(1) The amendments specified in the second column of the Fourth Schedule to this Act, which are consequential or relate to minor details, shall be made in the provisions of the Income Tax Act, 1918, specified in the first column of that Schedule.

(2) It shall be lawful for His Majesty in Council by Order to make such amendments of the forms of statements, lists and declarations contained in the Fifth Schedule to the Income Tax Act, 1918, as appear to His Majesty to be necessary to give effect to the provisions of this Part of this Act, and that Schedule shall have effect as amended by any Order so made.

37.—(1) The provisions of the Income Tax Acts shall, in relation to matters dealt with in this Part of this Act, have effect subject to the provisions of this Part of this Act, and shall, so far as inconsistent therewith, cease to have effect, and, subject as aforesaid, this Part of this Act shall be construed as one with the Income Tax Acts.

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PART VI

47. . . .

(2) Part III of this Act shall be construed together with the Income Tax Acts.

(3) This Act may be cited as the Finance Act, 1926.

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SECOND SCHEDULE

PART I—(*Agreement made the 14th April, 1926, between the British Government and the Government of the Irish Free State in respect of Double Income Tax.*)

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PART II—(*Modifications of Income Tax Acts for the purpose of giving effect to the Agreement set out in Part I of this Schedule.*)

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THIRD SCHEDULE

TABLE OF TRANSFERS OF VARIOUS PROPERTIES FROM SCHEDULE A TO SCHEDULE D

Property in respect of which Tax chargeable.	Case of Schedule D under which to be charged.	Provisions with respect to new method of charging.
Certain lands, tenements, hereditaments or heritages to which the rules of No. II of Schedule A apply.	Case III.	In computing the amount of an assessment under Schedule D the like deductions and allowances shall be made as would have been made if the assessment had been made under Schedule A, No. II. The proviso to Rule 6 of Schedule A, No. II, shall be deemed to be a rule of Schedule D, Case III, with respect to the fines to which the said Rule 6 applies.
Certain lands, tenements, hereditaments or heritages to which the rules of No. III of Schedule A apply.	Case I.	Rules 4, 5 and 7 of Schedule A, No. III, shall apply and shall be deemed to be rules of Schedule D, Case I, so far as regards those lands, tenements, hereditaments or heritages. No deduction or set-off . . .[98] shall be allowed in estimating the profits on account of, or by reference to, the annual value of any lands, tenements, hereditaments or heritages occupied and used in connection with the concern and not separately assessed and charged under Schedule A.

THE FINANCE ACT, 1927
(17 & 18 GEO. 5, c. 10)

[29th July, 1927]

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PART II

INCOME TAX

Charge of Tax and Miscellaneous

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21. Subsection (2) of section one hundred and fifty-seven of the Income Tax Act, 1918 (which provides that in the cases to which that subsection applies income tax shall be payable in two equal instalments), shall cease to have effect so far as it relates to tax chargeable under Schedule A, other

[98] Words repealed, Act of 1927, Sixth Sched., Part I.

than any tax so chargeable in respect of income which is, or is to be treated as, earned income.

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23. Where a trade, profession or vocation has been set up or commenced or income has first become chargeable under Case V of Schedule D within the period of two years immediately preceding the year next before the year of assessment, the provisions of subsection (1) of section twenty-nine of the Finance Act, 1926, shall apply for the purpose of computing income tax in respect of the profits or gains of that trade, profession or vocation or in respect of that income as they apply for the purpose of computing income tax in respect of the profits or gains or income mentioned in that subsection

25.—(1) Where the usual place of abode of the owner of a copyright is not within the United Kingdom, Rule 21 of the General Rules shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge.[99]

(2) In this section the expression " copyright " does not include a copyright in any dramatic work being a cinematograph production, or in any artistic work being a photograph intended to be used for the purpose of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus.

(3) . . .

(4) In this section the expression " owner of a copyright " includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright, and the reference to royalties or sums paid periodically for or in respect of a copyright shall not include royalties or sums paid in respect of copies of works which are shown to the satisfaction of the Special Commissioners to have been exported from the United Kingdom for distribution outside the United Kingdom.

(5) Rule 23 of the General Rules shall be extended so as to apply to all payments to which this section applies.

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27.—(1) Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed in respect thereof under Case VI of Schedule D, he may claim that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under the said Case VI, and that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed under the said Case VI for any of the six following years of assessment.

(2) In the application of this section to a loss sustained by a partner in a partnership the expression " the amount of any profits or gains arising from any transaction in respect of which he is assessed " shall be taken to mean in respect of any year such portion of the amount on which the partnership

[99] See Act of 1920, s. 16, and also s. 12 (3) (b).

is assessed under Case VI in respect of any transaction as he would be required under the Income Tax Acts to include in a return of his total income for that year.

(3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any such profits or gains as aforesaid for any year within the said six following years, and, so far as it cannot be so given, then from the next such assessment and so on.

. . . . . .

29.—(1) If, where a business carried on by any individual or by any individuals in partnership has, whether before or after the passing of this Act, been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or those individuals, the total income as computed for the purposes of income tax of any individual to whom or to whose nominee or nominees shares have been so allotted for any year of assessment throughout which he is the beneficial owner of the shares and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise, the provisions of section thirty-three of the Finance Act, 1926, shall apply as if the income so derived were profits and gains on which that individual was assessed under Schedule D in respect of that business for that year:

Provided that—

(i) where under the said section thirty-three, as applied by this section, a loss falls to be deducted from or set off against any such income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been or is liable to be assessed to tax for that year; and

(ii) where any loss, or any part of a loss, falls to be deducted from or set off against any part of the income from which tax was deductible by the company, the individual shall on giving notice in writing to the surveyor not later than twelve months after the end of the year of assessment to which the claim relates, be entitled to claim an appropriate repayment of tax, and the provisions of the Income Tax Acts relating to claims for repayment of tax in respect of any allowance or deduction shall, subject to any necessary modification, apply to claims for repayment under this section.

(2) This section in its application to the year of assessment in which a business is transferred as aforesaid shall have effect as if for the reference to the year of assessment throughout which the individual is the beneficial owner of the shares and throughout which the company carries on business there were substituted a reference to the period from the date of transfer to the fifth day of April next following.

. . . . . .

Provisions relating to Super-tax

31.—. . .

(4) Where an order has been made or a resolution passed for the winding-up of a company to which the said section twenty-one applies, the income of the company for the period from the end of the last year or other period for

which accounts of the company have been made up to the date of the order or resolution for winding up shall, for the purposes of the said section, be deemed to be income of that period available for distribution to the members of the company, and, as respects that period and the next preceding year or other preceding period or periods ending within that next preceding year for which accounts have been made up, the said section shall apply as if the words "within a reasonable time" in subsection (1) of the said section were omitted therefrom.

(5) Any notice required under the provisions of the said section twenty-one to be served upon a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any super-tax payable by or recoverable from the company under the provisions of the said section.

(6) The income apportioned to a member of a company for the period from the end of the last year or other period for which accounts have been made up to the date of the order or resolution for winding-up shall, for the purposes of super-tax, be deemed to have been received by him on the date of that order or resolution.

32.—(1) Where a member of a company (in this section referred to as "the first company"), the income of which for any year or period has been deemed to be the income of its members and has been the subject of an apportionment (in this section referred to as "the original apportionment") under section twenty-one of the Finance Act, 1922, is itself a company (in this section referred to as "the second company") to which the provisions of that section apply, the excess of the amount so apportioned to the second company over the amount, if any, which has been received by the second company out of the income as aforesaid of the first company in such manner as would, in the case of an individual, render the amount so received liable to be included in the statement of his income for the purposes of super-tax, shall for the purposes of the said section be deemed to be income of the members of the second company and shall be apportioned among them in accordance with their respective interests in that company, and the provisions of the said section shall, with any necessary modifications, apply accordingly.

(2) The second company shall, on being required by notice in writing to that effect given to it by the Special Commissioners, furnish the Commissioners with a statement showing the names and addresses and particulars of the respective interests of all its members as on the last day of the year or other period the income of which formed the subject of the original apportionment, and the income apportioned as aforesaid to the members of the second company shall, for the purposes of super-tax, be deemed to have been received by those members on the date on which the income apportioned as aforesaid to the members of the first company is deemed to have been received by them.

(3) Any super-tax chargeable by reference to the provisions of the said section twenty-one in respect of the amount of the income of the first company apportioned to any member of the second company shall be assessed upon that member in the name of the first company, and shall, subject to the provisions of the said section as to payment by the member, be payable by the first company, and the provisions of the said section as to the assessment, collection and recovery of super-tax chargeable in respect of the income of a company apportioned to any member thereof shall, with any necessary modifications, apply accordingly.

(4) Where a member of any such second company as aforesaid is itself a company to which the said section twenty-one applies, the income apportioned to it under the foregoing provisions of this section shall in turn be deemed to be the income of its members and apportioned to them, for purposes of assessment to super-tax, in accordance with their respective interests, and so on successively where any member to whom income of a company has been apportioned is itself a company to which the said section applies, so that successive apportionments shall in like manner be made until the entire amount of the income which was apportioned under the provisions of this section among the members of the second company has been apportioned to persons other than a company to which the said section applies, and the said section shall with any necessary modifications apply to such successive apportionments and to the furnishing of statements and to the assessment, collection and recovery of super-tax in respect of income apportioned thereunder, and, in particular, the date on which any such income is to be deemed to have been received by the member to whom it is apportioned shall be the date mentioned in subsection (2) of this section, and any super-tax which is chargeable in respect of income apportioned to a member being an individual shall be assessed and charged upon that member in the name of the first company.

23.—(1) Any individual upon whom notice is served by the Special Commissioners requiring him to furnish a statement of and particulars relating to any assets in which, at any time during the period specified in the notice, he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted, if the income from such assets had accrued from day to day and been apportioned accordingly, shall, whether an assessment to super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) The Special Commissioners may serve further notices whenever they consider it necessary for the purposes of this section until complete particulars have been furnished to their satisfaction.

(3) If it appears to the Special Commissioners by reference to all the circumstances in relation to the assets of any such individual (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such assets) that the individual has thereby avoided or would avoid more than ten per cent. of the amount of the super-tax for any year which would have been payable in his case if the income from those assets had been deemed to accrue from day to day and had been apportioned accordingly and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of super-tax, then those assets shall be deemed to be assets to which subsection (4) of this section applies.

(4) For the purposes of assessment to super-tax in the case of any such individual, the income from any assets to which this subsection applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such assets by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that an individual shall not be liable to be assessed to super-tax under this section in respect of any such income if he proves to the satisfaction of the Special Commissioners that the avoidance of super-tax was exceptional

and not systematic, and that there was not in this case in any of the three next preceding years any such avoidance of super-tax as is described in the provisions of the last preceding subsection.

(5) If any individual fails to furnish any statement or particulars required under this section, or if the Special Commissioners are not satisfied with any statement or particulars furnished under this section, they may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of his total income for the purposes of super-tax.

(6) If any individual without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(7) For the purposes of this section, the expression "assets" means—

(a) stocks or securities entitled to interest or dividend at a fixed rate only, not being stocks or securities the interest or dividend on which is dependent on the earnings of a company; and

(b) any other stocks or securities and any shares, if transactions in relation thereto have been effected by the individual otherwise than through a stock exchange in the United Kingdom and by a transfer on which duty has been paid at the rate of one pound per cent. under the heading "Conveyance or Transfer on Sale" in the First Schedule to the Stamp Act, 1891.

34. If, on an application made by any individual for the purpose, either at the time of making his return for the purposes of super-tax for any year or within the time limited for appealing against the assessment upon him to super-tax for that year, the applicant proves to the satisfaction of the Special Commissioners—

(a) that, as respects any assets, in consequence of the operation of the provisions of the Income Tax Acts which require that for purposes of super-tax any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from those assets, as estimated for the purposes of super-tax for that year, represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day; and

(b) that, in consequence, the amount of super-tax payable by him for that year exceeds by more than five per cent. the amount of the super-tax which would have been payable by him for that year if the amount of his income from those assets had not exceeded the amount which would be attributable to a period of one full year if the income from those assets were deemed to have accrued from day to day;

the Special Commissioners shall charge him to super-tax, or adjust his liability to super-tax, for that year and any succeeding year so as to give such relief as may be just, having regard to all the circumstances and in particular to the amount of any liability or additional liability to super-tax which would have arisen for any preceding year or years if—

(i) the income from such assets as aforesaid were deemed to have accrued from day to day and to have been apportioned accordingly; and

(ii) the income so deemed to have been apportioned to him had been treated as part of his total income for the purposes of super-tax.

35. If, on an application made by any individual, either at the time of making his return for the purposes of super-tax for any year or within the time limited for appealing against the assessment upon him to super-tax for that year, the applicant proves to the satisfaction of the Special Commissioners that, in consequence of the sale or transfer to him of any assets, the amount of super-tax payable by him for that year exceeds by more than ten per cent. the amount of the super-tax which would have been payable by him for that year if the income from those assets and from any assets sold or transferred by him were deemed to have accrued from day to day, then, for the purposes of any assessment to super-tax in the case of that individual for that year, the income from all such assets as aforesaid shall be deemed to have accrued from day to day and to have been received by him as and when it is deemed to have accrued.

36.—(1) Any income arising in respect of any assets which for any of the purposes of the last three preceding sections of this Act is deemed to have accrued from day to day or which is to be computed as if it were income that accrued from day to day shall—

(a) if payable in respect of any stated period, be deemed to have accrued from day to day during that period; and

(b) if not payable in respect of any stated period, be deemed to have accrued from day to day during the period of twelve months next preceding the date on which that income was declared payable or during the period between the last previous declaration of a dividend, (not being a dividend expressed to be an interim dividend in respect of a stated period) payment of interest, or other yield or produce of such asset and the date aforesaid, whichever period is less.

(2) The provisions of the Income Tax Acts relating to appeals against assessments to super-tax, including the provisions relating to the statement of a case for the opinion of the High Court on a point of law, shall, with any necessary modifications, apply for the purposes of the last three preceding sections of this Act.

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PART III

AMENDMENT WITH RESPECT TO METHOD OF CHARGING ADDITIONAL INCOME TAX ON HIGHER INCOME, BASIS OF ASSESSMENT UNDER SCHEDULE E, ETC.

38.—(1) Income tax for the year 1928—29 and every subsequent year shall, instead of being charged at a single rate, be charged at a standard rate and, in the case of an individual whose total income from all sources exceeds a stated amount, at a rate or rates exceeding the standard rate in respect of any part or parts of his income in excess of that amount, and where income tax is so charged for any year the following provisions shall have effect, subject to the other provisions of this Part of this Act—

(a) all such enactments relating to income tax as were in force immediately before the commencement of this Part of this Act shall, in so far as they relate to income tax (not including super-tax) have effect as if income tax were charged for that year at the standard rate only, and in the case of an individual whose total income exceeds the stated amount, the amount of the income tax so charged shall, so far as that income tax is borne by him in respect of his income, be deemed to be an instalment at the standard rate of the amount of income tax for which he is chargeable for that year;

(b) where the amount of income tax payable by an individual for that year in respect of his total income is greater than the amount which would have been payable by him in respect thereof if income tax had been chargeable at the standard rate only, the difference between those two amounts (in this Part of this Act referred to as "sur-tax") shall be computed, assessed, charged, collected and paid as a deferred instalment of income tax according to the provisions of this Part of this Act relating to sur-tax;

and super-tax shall not be charged for the year 1929—30 or any subsequent year.

(2) The expression "total income" in relation to any person means the total income of that person from all sources estimated, as the case may be, either in accordance with the provisions of the Income Tax Acts as they apply to income tax chargeable at the standard rate or in accordance with those provisions as they apply to sur-tax.

39.—(1) Such of the provisions of the Income Tax Acts as provide that income tax may be deducted from any payment at the rate or rates of tax in force during the period through which the payment was accruing due, or that there may be deducted from any dividend the tax appropriate thereto, or that a proportionate deduction of the tax charged shall be allowed by any person out of any produce or value payable to him, shall have effect as if they provided that tax may be deducted or shall be allowed at the standard rate for the year in which the amount payable becomes due:

Provided that this subsection shall not—

(a) apply to the deduction to be made under Rule 1 of No. VIII in Schedule A; or

(b) affect the first proviso to Rule 4 of the said No. VIII relating to deductions in Scotland.

(2) In estimating under the Income Tax Acts the total income of any person, any income which is chargeable with income tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year, and any deductions which are allowable on account of sums payable under deduction of income tax at the standard rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year, notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

(3) Where a person is required to be assessed and charged with income tax in respect of any property, profits or gains out of which he makes any payment in respect of any annual interest, annuity or other annual sum, or any royalty or other sum in respect of the user of a patent, he shall, in respect of so much of the property, profits or gains as is equal to the said payment and may be deducted in computing his total income, be charged at the standard rate only.

40.—(1) The enactments set out in Part I of the Fifth Schedule to this Act in so far as they provide for relief from income tax either by means of a deduction from assessable income or from the amount of earned income or from the amount of total income, shall, subject to the amendments specified in the third column of the said Part I, have effect as if they provided for relief from income tax by means of a deduction from the amount of income tax with which any individual is chargeable equal to tax at the standard rate on the amount of the deduction from income to which he would have been entitled under the said provisions:

Provided that the amount of any deduction under this subsection shall be subject to such adjustment as may be proper in any case where relief is given in respect of Dominion income tax.

(2) Every individual shall, in substitution for the relief under section twenty-three of the Finance Act, 1920, be entitled to have the amount of the income tax which remains chargeable on him in respect of his total income after there has been made any deduction of tax to which he is entitled under subsection (1) of this section reduced by a further deduction *equal*—

(a) *where the amount so remaining chargeable does not exceed the tax at the standard rate on fifty pounds, to two-thirds of that amount; and*

(b) *where that amount exceeds the tax at the standard rate on fifty pounds, to two-thirds of the tax at the standard rate on fifty pounds plus*—

(i) *one third of the excess; or*

(ii) *one third of the tax at the standard rate on seventy-five pounds,*

whichever is the less: [1]

Provided that, where an individual has received relief from United Kingdom income tax in respect of Dominion income tax, the deduction to be made under this subsection shall not be less than it would have been if no such relief had been given, but nothing in this subsection shall affect any adjustment required to be made under subsection (3) of section twenty-seven of the Finance Act, 1920 (which provides for an adjustment where relief in respect of Dominion income tax has been allowed in respect of any part of the income of any individual at a rate greater than the rate appropriate to his case).

(3) Where under the provisions of the Income Tax Acts an individual is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of any amount which is paid or borne by him out of his income or which is allowable or may be deducted therefrom, or in respect of any reduction of an assessment relating to his income or any part thereof, or in respect of any adjustment or set-off with regard to a loss, and claims that relief for any year of assessment, any relief granted shall not extend so as to make the total income tax paid or payable by that individual for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

(4) Any reference in any provision of the Income Tax Acts to any allowance or deduction which is replaced by a relief under this section shall be construed as a reference to such last-mentioned relief.

41.—(1) A claim for a deduction of tax under the last preceding section of this Act shall be delivered to the surveyor and shall be made in such form as the Commissioners of Inland Revenue may direct.

(2) Where the surveyor objects to any such claim it shall be heard and determined by the commissioners concerned in like manner as in the case of an appeal against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to a statement of a case for the opinion of the High Court on a point of law shall apply.

(3) Subject to the provisions of this section, all the provisions of the Income Tax Acts relating to claims for any allowance or deduction shall, with any necessary modifications, apply to claims to which this section relates:

Provided that nothing in this section shall affect the provisions of section twenty of the Finance Act, 1926 (which relates to the making of claims by certain individuals who are not resident in the United Kingdom).

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[1] No. 2 Act of 1945, s. 17.

42.—(1) Sur-tax shall be due and payable as a deferred instalment of income tax on or before the first day of January next after the end of the year of assessment for which it is payable, except that sur-tax or any part of any sur-tax included in an assessment which is signed and allowed on or after the said first day of January shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed.

(2) Sur-tax shall be assessed and charged by the Special Commissioners, and, notwithstanding anything in the Income Tax Acts providing for the separate assessment of income arising from different sources, shall be assessed and charged in one sum.

(3) The Special Commissioners may make an assessment or additional assessment in respect of sur-tax during any time within the year of assessment or within the period allowed by the Income Tax Acts for the making of assessments and additional assessments in respect of income tax charged at the standard rate, and section twenty-four of the Finance Act, 1923 (which provides for relief in respect of error or mistake), shall, with any necessary modifications, apply to sur-tax as it applies to tax charged under an assessment under Schedule D.

(4) Where an assessment to income tax made at the standard rate has under the provisions of the Income Tax Acts become final and conclusive for any year, the assessment shall also be final and conclusive for the purpose of estimating total income for the purpose of sur-tax for that year, and no allowance or adjustment of liability on the ground of diminution of income or loss shall be taken into account in estimating the total income for that purpose, unless that allowance or adjustment has been previously made in respect of the income tax charged at the standard rate on an application under the special provisions of the Income Tax Acts relating thereto.

(5) For the purpose of charging sur-tax, there shall be deducted from the total income of an individual in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which, in their opinion, are necessarily incidental to the discharge of the functions of his office, and for which an allowance has not already been made.

(6) Relief from United Kingdom income tax in respect of Dominion income tax shall not be taken into account in computing sur-tax, but shall be given from income tax charged or chargeable at the standard rate.

(7) Assessments in respect of sur-tax shall be subject to appeal to the Special Commissioners except on such matters as under subsection (4) of this section are to be regarded as having been finally and conclusively determined, and all the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with income tax at the standard rate and to assessments to such tax;

(b) to appeals against such assessments;

(c) to the collection and recovery of such tax;

(d) to cases to be stated for the opinion of the High Court;

shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of sur-tax, and the Special Commissioners shall, for the purpose of assessment of sur-tax, have any powers of a surveyor and, for the purpose of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same power at and upon the determination of, the appeal as a surveyor has at, and upon the determination of, any appeal relating to income tax at the standard rate.

(8) The Commissioners of Inland Revenue may make regulations for the purpose of carrying into effect the provisions of this Act relating to sur-tax.

(9) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, by either a husband or wife, before the sixth day of July in the year next following the year of assessment:—

(a) Sur-tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge and recovery of sur-tax, and the penalties for failure to make a return, shall apply as if they were not married; and

(b) The income of the husband and wife shall be treated as one in estimating total income for the purposes of sur-tax, and the amount of sur-tax payable in respect of the total income shall be divided between the husband and wife in proportion to the amounts of their respective incomes and the total amount payable shall not be less than it would have been if an application had not been made under this section.[3]

The Special Commissioners may require returns to be made at any time for the purpose of this subsection.

(10) Subject to the provisions of this Part of this Act, all the provisions of the Income Tax Acts which are in force as from the date of the commencement of this Part of this Act (other than Part II of the Income Tax Act, 1918), shall, in so far as they relate to super-tax or to any matter or thing touching super-tax, continue to have effect and be construed as relating also to sur-tax and to any similar matter or thing touching sur-tax, and as if, in the case of any individual liable to sur-tax, a return which he has been required to make under subsection (1) of the next following section of this Act were a return which he had been required to make of his total income for the purposes of super-tax.

43.—(1) The provisions of the Income Tax Acts which direct that persons shall prepare and deliver statements of profits or gains shall be extended so as to require any individual upon whom a particular notice is served for that purpose to prepare and deliver within the time limited by such notice a true and correct return in the prescribed form of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment, computed in accordance with the provisions of the Income Tax Acts, as amended by this Act:

Provided that the computation of income shall be made by reference to the year preceding the year of assessment and not by reference to any other year or period.

(2) Any particular notice which under the provisions of the Income Tax Acts (including subsection (1) of this section) may be given to any person requiring him to prepare and deliver any such lists, declarations, statements or returns as are required by the Income Tax Acts to be delivered (other than a notice requiring the delivery of a statement of the annual value of lands and tenements for the purposes of assessment under Schedule A or Schedule B) shall be given by the surveyor and not by the assessor, and any list, declaration, statement or return which the person to whom the notice is given is required to make shall be delivered to the surveyor, but nothing in this subsection shall affect the operation of section one hundred and seventeen of the Income Tax Act, 1918 (which relates to the powers of assessors for public departments).

[3] See further, Act of 1930, s. 22.

(3) Any such lists, declarations, statements and returns as are referred to in subsection (1) and (2) of this section shall be in such form as the Commissioners of Inland Revenue shall prescribe, and in prescribing forms under this subsection the Commissioners shall have regard to the desirability of securing, as far as may be possible, that no person shall be required to make more than one return annually of the sources of his income and the amounts derived therefrom.

(4) Subject to the provisions contained in this section, all the provisions of the Income Tax Acts (including the provisions of any Regulations made under those Acts) relating to the delivery of lists, declarations, statements and returns to the assessor (including the provisions relating to penalties) shall, with any necessary modifications, apply to lists, declarations, statements and returns required by this section to be delivered to the surveyor and any such lists, declarations, statements and returns shall be made available to the General, Additional or Special Commissioners and their respective clerks, and, whenever necessary, to the assessors for the preparation and making of assessments.

44.—(1) It shall be the duty of every individual who, for any year of assessment, is chargeable to income tax in respect of any part of his total income at a rate exceeding the standard rate to give notice that he is so chargeable to the Special Commissioners before the thirtieth day of September next following the end of that year.

(2) In any case in which it appears to the Special Commissioners that the particulars contained in any return made by any person, whether acting on his own behalf or as representing an incapacitated, non-resident, or deceased person, are insufficient to enable them to assess and charge sur-tax or that any person has failed to make a return, the Special Commissioners may serve upon him, in manner prescribed by regulations under this Part of this Act, a notice requiring him to make a return of his total income or of the total income of the incapacitated, non-resident, or deceased person, as the case may be, and every person so required shall, whether he is or is not chargeable with sur-tax, make such a return in the form and within the time required by the notice.

(3) If any person fails to make any such return when so required or if the Special Commissioners are not satisfied with any return made by him, they may make an assessment of sur-tax according to the best of their judgment, and if any person, without reasonable excuse, fails to make any such return as aforesaid or give any notice required by subsection (1) of this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the default continues.

(4) Notwithstanding anything in this Part of this Act, section one hundred and thirty two of the Income Tax Act, 1918 (which contains provisions against fraudulent practices), shall apply for the purposes of sur-tax as it applies for purposes of income tax at the standard rate, subject to the modification that for the words "the general commissioners for the division in which he has been charged, or if he has not been charged, then for any division in which he is chargeable" there shall be substituted the words "the Special Commissioners."

45.—(1) Subject to the provisions of this section, Rule 1 of the Rules applicable to Schedule E shall be construed as if for the words "for the year of assessment" there were substituted the words "and shall be computed

on the amount of all such salaries, fees, wages, perquisites or profits whatsoever therefrom for the year preceding the year of assessment ":

Provided that nothing in this section shall affect the basis of assessment—

(a) in any case falling within section seventeen of the Finance Act, 1923, which provides for income tax on leave pay, etc., to be chargeable under Schedule E; or

(b) in the case of any office or employment held or exercised occasionally or intermittently in the United Kingdom by a person who is not continuously resident there . . .[3a]

(2) Any deduction from emoluments allowed under the provisions of the Income Tax Acts for the purpose of computing an assessment to income tax under Schedule E shall be made by reference to the amount paid or borne for the year or portion of the year upon the emoluments of which the computation is made.

. . . . . .

(4) In the case of income tax chargeable under Schedule E in respect of any office or employment held by any person, or any annuity, pension or stipend to which any person is entitled—

(i) income tax shall be computed, as respects the year of assessment in which the person first holds the office or employment, or becomes entitled to the annuity, pension or stipend, on the amount of his emoluments for that year;

(ii) where the person first held the office or employment, or became entitled to the annuity, pension or stipend, on some day in the year preceding the year of assessment other than the sixth day of April, income tax shall be computed on the amount of the emolument for the year of assessment;

(iii) where the person first held the office or employment, or became entitled to the annuity, pension or stipend, on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, he shall be entitled, on giving notice in writing to the surveyor within twelve nonths after the end of the year of assessment, to require that his emoluments shall be charged on the amount thereof for that year and if the tax charged has been paid, any tax overpaid shall be repaid.

(5) Where in any year of assessment a person ceases to hold an office or employment or to be entitled to an annuity, pension or stipend chargeable under Schedule E, tax shall be charged for that year on the amount of his emoluments for the period beginning on the sixth day of April in that year and ending on the date of the cessation, and, if tax has been charged otherwise than in accordance with this provision, any tax overpaid shall be repaid, or an additional assessment may be made, as the case may require, and if the emoluments for the year ending on the fifth day of April in the year preceding the year of assessment in which the cessation occurs exceed the amount on which tax has been charged for that preceding year in respect of the office, employment, annuity, pension or stipend, an additional assessment may be made so that tax shall be charged for that preceding year on the amount of the emoluments for the said year ending on the fifth day of April.

[3a] Words repealed, Employments Act, 1943, s. 5 (3) and 3rd Schedule.

(6) In the case of the death of a person in whose case, if he had not died, tax would, under the provisions of the last preceding subsection, have become chargeable for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

(7) Where any person has ceased to hold an office or employment under a railway company or has ceased to be entitled to any pension paid by a railway company, such part of any tax assessed and charged upon the company[3b] under Rule 7 of the Rules applicable to Schedule E in respect of that office, employment or pension as cannot be deducted out of emoluments shall be collected and levied from that person or from his executors or administrators, as the case may be, as if he or they had been chargeable and charged with the said tax.

(8) Section twenty-four of the Finance Act, 1923 (which provides for relief in respect of error or mistake), shall apply to tax charged under an assessment to income tax made under Schedule E as it applies to tax charged under an assessment to income tax made under Schedule D.

(9) Rules 2, 3 and 5 of the Rules applicable to Schedule E shall cease to have effect as regards assessments under that Schedule in the case of which the basis of assessment is affected by this section.

(10) In this section the expression "emoluments" means all salaries, fees, wages, perquisites or profits or gains whatsoever arising from an office or employment, or the amount of any annuity, pension or stipend, as the case may be.

46. The amendments set out in Part II of the Fifth Schedule to this Act, being amendments consequential on the foregoing provisions of this Part of this Act, shall be made in sections twenty-five and twenty-seven of the Finance Act, 1920,

47.—(1) The provisions of the Income Tax Acts shall, in relation to matters dealt with in this Part of this Act, have effect subject to the provisions of this Part of this Act and shall, so far as inconsistent therewith, cease to have effect, and subject as aforesaid this Part of this Act shall be construed as one with the Income Tax Acts.

PART IV

. . . . . .

57. . . .

(2) Part II of this Act shall be construed together with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1927.

. . . . . .

[3b] But see Employments Regs., 1944, Reg. 42 (3), p. 768

FIFTH SCHEDULE

PART I

Enactment.	Subject Matter.	Amendment.
The Finance Act, 1920:		
Section 17	Deductions to be allowed in ascertaining taxable income.	
Section 18	Personal allowance.	
Section 19	Deduction in respect of relatives taking charge of widower's or widow's children.	
Section 20	Deduction in respect of widowed mother.	
Section 21	Deduction in respect of children.	
Section 22	Deduction in respect of dependant relatives.	
The Finance Act, 1925:		
Section 15	Allowances in respect of earned income and allowances from total income of persons of the age of sixty-five years.	

PART II

2. *Amendments of section 27 of Finance Act*, 1920

. . . . . .

(iv) For the purposes of section twenty-seven a person shall not be deemed to have paid or to be liable to pay United Kingdom income tax on such part of his income as is equal to the amount by reference to which he is by virtue of subsection (1) of section forty of this Act granted relief from income tax by means of a deduction of tax.

. . . . . .

THE FINANCE ACT, 1928
(18 & 19 GEO. 5, c. 17)

[3rd August, 1928]

. . . . . .

PART II—INCOME TAX

17.—(1) An individual who for any year of assessment is chargeable to sur-tax may, by giving notice in writing to the Special Commissioners not later than the first day of May next following the end of that year of his desire so to do, elect to make a return of his total income to those Commissioners, and any such election shall have effect not only as respects that year, but also as respects all subsequent years for which he remains chargeable to sur-tax:

Provided that any individual who has so elected may at any time in any subsequent year of assessment give notice in writing to the Commissioners of his desire to revoke the election and thereupon the election shall cease to have effect except as respects any year preceding the year in which notice is so given.

(2) Where for any year of assessment an election made by an individual under this section is in force—

(a) the Special Commissioners may serve upon that individual a notice requiring him to make a return of his total income, and that individual shall make such a return in the form and within the time required by the notice, and subsections (3) and (4) of section forty-four of the Finance Act, 1927, shall apply in relation to any such return; and

(b) the return required to be made by that individual under subsection (1) of section forty-three of the Finance Act, 1927, of all the sources of his income and of the amount derived from each source for that year shall be limited to a return of any income which is assessable under either Schedule D or Schedule E.

18.—(1) Any company to which section twenty-one of the Finance Act, 1922, applies, may at any time after the general meeting at which the accounts of the company made up for any year or other period are adopted, forward to the Special Commissioners for their consideration a copy of the said accounts, together with a copy of the report, if any, of the directors for that year or period, and such further information, if any, as it may think fit, and the Special Commissioners shall, subject to the provisions of this section, on receiving the said accounts and other documents, if any, proceed to consider the position of the company in relation to the said section twenty-one.

(2) The Special Commissioners may as soon as reasonably may be, but not later than twenty-eight days after the receipt of the said accounts and other documents, if any, call upon the company to furnish to them within twenty-eight days, or such extended period as they may subsequently allow, such further particulars as they may reasonably require:

Provided that if the particulars so required are not furnished to the Commissioners within the period or extended period allowed for the purpose they may proceed under this section upon the information before them.

(3) Where a company has under subsection (1) of this section forwarded to the Special Commissioners the accounts of the company for any year or other period, whether with or without any other documents, the following provisions shall have effect:—

(a) unless within three months after the receipt of the said accounts and other documents, or, if further particulars have been required as aforesaid, within three months after the receipt of those particulars, or the expiration of the period within which those particulars are to be furnished, as the case may be, the Special Commissioners intimate to the company their intention to take further action in the case of the company under the said section twenty-one in respect of that year or other period, the power of the Commissioners to take any such further action in respect of that year or other period shall absolutely cease and determine; and

(b) notwithstanding that the Special Commissioners have given such an intimation as aforesaid, they shall not after the expiration of six months from the date of the intimation have power in relation to that company to issue a notice under paragraph (4) of the First Schedule to the Finance Act, 1922, with respect to that year or period, or, unless such a notice has been issued before the expiration of the said period of six months, to give a direction in relation to the company under subsection (1) of section twenty-one of the said Act.[1]

[1] See modifications as to investment companies, Act of 1937, 3rd Sched. 2, p. 597.

19. Where a person has been assessed to tax for any year of assessment, not being a year prior to the year 1927—28, under Rule 21 of the General Rules, in respect of a payment made wholly and exclusively for the purposes of a trade, profession, or vocation (not being a payment of or on account of copyright royalties to which section twenty-five of the Finance Act, 1927, applies) the amount on which tax has been paid under that assessment shall, for the purposes of section thirty-three of the Finance Act, 1926, be treated as though it were a loss sustained in that trade, profession, or vocation, and, subject to the provisions of that section, relief in respect thereof shall be allowed in computing that person's liability to tax in respect of the profits or gains of that trade, profession, or vocation for the six years following the said year of assessment:[2]

Provided that no relief shall be allowed under this section in respect of any such payment or any part of any such payment which is not ultimately borne by the person assessed or which is charged to capital.

. . . . . .

21. The Agreement made the twenty-fifth day of April, nineteen hundred and twenty-eight, between the British Government and the Government of the Irish Free State amending the Agreement made on the fourteenth day of April, nineteen hundred and twenty-six, between the said Governments in respect of double income tax (which first mentioned Agreement is set out in the Fourth Schedule to this Act) is hereby confirmed, and shall have effect, with respect to exemption or relief to be granted from British tax, for the year 1928—29 and any subsequent year, provided that, with respect to exemption or relief to be granted from Irish Free State tax, it has effect for that year by virtue of an Act of the Legislature of the Irish Free State.

PART III—MISCELLANEOUS

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30.—(1) Where any property is held upon trust in accordance with directions which are valid and effective under section nine of the Superannuation and other Trust Funds (Validation) Act, 1927 (which provides for the validation of trust funds for the reduction of the National Debt), any income arising from that property or from any accumulations of any such income and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust shall be exempt from income tax.

. . . . . .

35. . . .

(2) This Act so far as it relates to income tax shall be construed together with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1928.

. . . . . .

FOURTH SCHEDULE

Agreement made the 25th day of April, 1928, between the British Government and the Government of the Irish Free State amending the Agreement made on the 14th day of April, 1926, between the said Governments in respect of Double Income Tax.

. . . . . .

[2] See Act of 1932, s. 19.

THE FINANCE ACT, 1930
(20 & 21 Geo. 5, c. 28)

[1st August, 1930]

. . . . . .

Part II—Income Tax

Miscellaneous

12.—(1) If in any year of assessment a resolution having statutory effect under the Provisional Collection of Taxes Act, 1913, provides for the charging of income tax at a standard rate lower than that charged for the previous year, the following provisions shall have effect with respect to deductions in respect of income tax by any body corporate, under Rule 19 of the General Rules from payments of interest on any of its securities, or under Rule 20 of the General Rules from payments of preference dividends on any of its shares—

(a) any deduction, which was made before the expiration of one month from the passing of the resolution and which would if the tax had been renewed at the rate imposed for the previous year have been a legal deduction, shall be deemed to be a deduction rendered legal by section two of the said Act, and the said section two shall, subject to the provisions of this section, apply accordingly;

(b) any over-deduction to be made good under the said section two may be made good by a reduction of the amount of tax deducted from the next payment of like nature made on the security or share in question after the passing of the Act imposing the tax for the year:

Provided that the foregoing provision shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act so imposing the tax;

(c) any amount made good under the said section two shall—

(i) in the case of an over-deduction which is made good under paragraph (b) of this subsection, enure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and

(ii) in any other case, enure to the benefit of the person entitled to the security or share in question at the date when the amount is made good,

irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security or share, at the date when the original deduction was made.

(2) Subsection (2) of section two hundred and eleven of the Income Tax Act, 1918 (which makes provision as to the deduction in any year of income tax which has not been deducted before the passing of the Finance Act for the year), shall apply with respect to—

(a) any preference dividend from which a deduction of tax may be made under Rule 20 of the General Rules; and

(b) any payment for or in respect of copyright to which section twenty-five of the Finance Act, 1927, applies; and

(c) any royalty, or other sum, paid in respect of the user of a patent, as it applies with respect to rent, interest, annuity or any other annual payment.

(3) Where on payment of a dividend (not being a preference dividend within the meaning of this section), income tax has, under Rule 20 of the

General Rules, been deducted therefrom by reference to a standard rate of tax greater or less than the standard rate for the year in which the dividend became due, the net amount received shall, for all the purposes of the Income Tax Acts, be deemed to represent income of such an amount as would, after deduction of tax by reference to the standard rate last-mentioned, be equal to the net amount received, and for the said purposes there shall in respect of that income be deemed to have been paid by deduction tax of such an amount as is equal to the amount of tax on that income computed by reference to the standard rate last-mentioned.[1]

(4) In this section the expression " preference dividend " means—

(a) a dividend payable on a preferred share at a fixed gross rate per cent.; or

(b) where a dividend is payable on a preferred share partly at a fixed gross rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent.,

and the expression " share " includes stock.

13.—(1) Subject to the provisions of this section, in computing for the purposes of sur-tax the total income for any year of an individual who has entered into a contract of assurance, no deduction shall be allowed in respect of any interest on any borrowed money which has been applied directly or indirectly to or towards the payment of any premium under that contract, or of any sum paid in lieu of any such premium.

(2) Where the benefit of a contract of assurance entered into by any person has become vested in another person, being an individual, subsection (1) of this section shall apply in relation to that individual—

(a) as if the contract had been a contract entered into by him; and

(b) in a case where the benefit of the contract became vested in him by virtue of an assignment and any payment was made by him in consideration of the assignment, as if that payment were the payment of a premium under the contract; and

(c) in a case where, either as being the person in whom the said benefit is vested, or by reason of any agreement under or in pursuance of which the said benefit became vested in him, he pays any interest on any borrowed money, as if that money had been applied to the payment of a premium under the contract.

(3) This section shall not, where the interest is payable at a rate not exceeding ten per cent. per annum, apply to—

(a) interest on borrowed money applied to or towards the payment of any premium under a contract of assurance entered into before the fifteenth day of April, nineteen hundred and thirty, which assures a fixed capital sum payable either—

(i) on death only; or

(ii) on the expiration of a period of not less than ten years from the date of the commencement of the contract or on earlier death;

(b) interest on money borrowed before the sixth day of April, nineteen hundred and twenty-nine, unless

(i) the money was borrowed from an assurance company; and

(ii) the repayment thereof was secured on a contract of assurance; and

(iii) the premium in question was a premium under that contract;

[1] See No. 1 Act of 1931, s. 7.

(c) interest on money borrowed mainly on the security of property other than a contract of assurance, if the premium in question either—

(i) is payable under a contract of assurance entered into in order to provide against the failure of a contingent interest in any property, and to serve as additional security for the loan and for no other purpose; or

(ii) is the first of a series of premiums payable under a contract of assurance entered into solely in order to provide for the repayment of the money borrowed and does not exceed ten per cent. of the sum assured under that contract;

(d) interest on borrowed money applied to or towards the payment of premiums under a contract of assurance which assures throughout the term of the contract a capital sum payable on death, if neither the amount of the first premium under the contract nor the amount subsequently payable by way of premiums thereunder in respect of any period of twelve months exceeds one-eighth of the capital sum payable on death;

(e) interest on borrowed money applied to or towards the payment of premiums (not being premiums such as those specified in the preceding paragraphs of this subsection) each of which is one of a series of equal premiums payable at equal intervals of not more than one year, except so far as such interest exceeds in the year of assessment one hundred pounds in all.

(4) The provisions of section twenty-two of the Finance Act, 1922, with regard to the delivery of particulars as to deductions claimed to be allowed, shall be extended so as to enable the special commissioners to require such particulars with respect to deductions and otherwise as they may consider necessary for the purpose of carrying this section into effect.

(5) In this section—

(a) the expression "contract of assurance" means a contract of assurance or a contract similar in character to a contract of assurance, being in either case a contract under which a capital sum is expressed to be payable in the future in return for one or more antecedent payments, and the expression "premium" means any such antecedent payment;

(b) the expression "interest" includes any sum payable in respect of any borrowed money,

(c) any reference to borrowed money applied to or towards any payment shall be deemed to include a reference to borrowed money applied directly or indirectly to or towards the replacement of any money so applied;

(d) any reference to a capital sum payable on death under a contract of assurance shall be construed as a reference to the actual capital sum assured on death, exclusive of any addition which has arisen or may arise from any bonus, share of profits, return of premiums or otherwise, and in the case of a contract under which different capital sums are payable on death in different events, as a reference to the least of those sums.

15.—(1) In this section the expression "charged" means charged to income tax in respect of the profits or gains of a trade, profession or vocation, and the expressions "the second year of assessment" and "the third year of assessment" in relation to the charge of income tax in respect of the profits or gains of any trade, profession or vocation mean respectively the

year next after and the year next but one after the year of assessment in which that trade, profession or vocation was set up or commenced.

(2) The person charged or liable to be charged shall be entitled, on giving notice in writing to the surveyor within two years after the end of the second year of assessment to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains of each such year respectively:

Provided that he may by notice in writing given to the surveyor within twelve months after the end of the third year of assessment revoke the notice and in such case tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.

(3) If at any time during the second or third year of assessment, any such change as is mentioned in paragraph (1) of Rule 11 of the Rules applicable to Cases I and II of Schedule D occurs in the persons engaged in the trade, profession, or vocation, a notice for the purposes of the last preceding subsection or of the proviso thereto, must, if given after the occurrence of the change—

(a) in the case of a notice given within twelve months after the end of the second year of assessment, be signed by each of the persons who were engaged in the trade, profession, or vocation, at any time, between the commencement of the second year of assessment and the giving of the notice, or, in the case of a deceased person, by his legal representatives; and

(b) in the case of a notice given after the end of the third year of assessment, be signed by each of the persons who were engaged in the trade, profession, or vocation, at any time during the second or third year of assessment, or, in the case of a deceased person, by his legal representatives.

(4) In the case of the death of a person who, if he had not died, would, under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

(5) There shall be made such additional assessments, reductions of assessments or repayments of tax as may in any case be required in order to give effect to the foregoing provisions of this section.

(6) This section shall apply in relation to trades, professions or vocations set up or commenced in the year 1928—29 or any subsequent year of assessment:

. . . . . .

17.—(1) Subject to the provisions of this section if His Majesty in Council is pleased to declare—

(a) that any profits or gains arising directly or indirectly to a person resident in any foreign state or in any part of His Majesty's dominions outside the United Kingdom through an agency in the United Kingdom or to a person resident in the United Kingdom through an agency in any foreign state or in any part of His Majesty's dominions outside the United Kingdom are chargeable both to United Kingdom income tax and to income tax payable under the law in force in that foreign state or that part of His Majesty's dominions; and

(b) that arrangements as specified in the declaration have been made with the Government concerned with a view to the granting of relief from such double taxation,

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from the United Kingdom income tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the foreign state or in the part of His Majesty's dominions, have the effect of law in the foreign state or the part of His Majesty's dominions:

Provided that no arrangements made under this section shall exempt from United Kingdom income tax any profits or gains which either—

(i) arise from the sale of goods from a stock in the United Kingdom; or

(ii) accrue to a person resident in the United Kingdom; or

(iii) accrue to a person not resident in the United Kingdom directly or indirectly through any branch or management in the United Kingdom or through any agency in the United Kingdom where the agent has and habitually exercises a general authority to negotiate and conclude contracts.

(2) Any declaration made by His Majesty in Council under this section shall be laid before the Commons House of Parliament as soon as may be after it is made and, if an address is presented to His Majesty by that House within twenty-one days on which that House has sat next after the declaration is laid before it, praying that the declaration may be revoked, His Majesty in Council may revoke the declaration and the arrangements specified in the declaration shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new declaration.

(3) The obligation as to secrecy imposed by any enactment with regard to income tax shall not prevent the disclosure to any authorised officer of the foreign state or part of His Majesty's dominions mentioned in the declaration of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

(4) In this section the expression "His Majesty's dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by the Government of some part of His Majesty's dominions.

18.—(1) Where any payment to which section twenty-five of the Finance Act, 1927, applies (which section provides for the taxation of copyright royalties by deduction in cases where the usual place of abode of the owner of the copyright is not within the United Kingdom) is made through an agent resident in the United Kingdom, and that agent is entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purpose of Rule 21 of the general rules be taken to be the amount thereof as diminished by the sum which the agent is so entitled to deduct:

Provided that, where the person by or through whom any such payment is made does not know that any such commission is payable or does not know the amount thereof, any tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts to the satisfaction of the special commissioners, there shall be made to the agent on behalf of the owner of the copyright such payment of tax as is proper in respect of the sum deducted by way of commission.

(3) The time of the making of a payment to which section twenty-five of the Finance Act, 1927, applies shall, for all the purposes of the Income Tax Acts, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

20.—(1) Subject to the provisions of this section, income arising from any office or employment to which this section applies shall be exempt from income tax, and no account shall be taken of any such income in estimating the amount of income for any of the purposes of the Income Tax Acts.

(2) The offices and employments to which this section applies are the following, that is to say:—

(a) the office of a consul in the United Kingdom in the service of any foreign state;

(b) the employment of an official agent in the United Kingdom for any foreign state, not being an employment exercised by a British subject or exercised in connection with any trade, business or other undertaking carried on for the purposes of profit.

(3) In this section the expression "consul" means a person recognised by His Majesty as being a consul general, consul, vice-consul or consular agent, and the expression "official agent" means a person not being a consul, who is employed on the staff of any consulate, official department or agency of a foreign state, not being a department or agency which carries on any trade, business or other undertaking for the purposes of profit.

21. If, on an application made to the Commissioners of Inland Revenue not later than twelve months after the end of any year of assessment it is shown to the satisfaction of the said Commissioners that any apartment or tenement in any house or building let in different apartments or tenements and occupied by two or more persons severally was unoccupied during that year or any part of that year, the said Commissioners shall cause such relief to be given from tax charged under Schedule A in respect of that house or building as appears to them to be just and shall, where necessary, direct repayment to be made of any tax which has been overpaid.

22.—(1) Subject to the provisions of this section an application duly made, whether before or after the passing of this Act, by a husband or a wife—

(a) under Rule 17 of the general rules for separate assessment to income tax for the year 1930—31 or any subsequent year of assessment; or

(b) under subsection (9) of section forty-two of the Finance Act, 1927, for separate assessment to sur-tax for the year 1929—30 or any subsequent year of assessment;

shall have effect not only as respects the year of assessment for which it is made but also for any subsequent year of assessment.

(2) A person who has made any such application as is mentioned in the last preceding subsection for any year of assessment may give for any subsequent year of assessment a notice to withdraw that application, and where such notice is given the application shall not have effect with respect to the year for which the notice is given or any subsequent year.

(3) A notice of withdrawal under this section shall be in such form and shall be made in such manner as may be prescribed by the Commissioners of Inland Revenue, and shall not be valid unless it is given within the period allowed by law for making, for the year for which the notice is given, applications similar to that to which the notice relates.

23.—(1) The special commissioners may cause to be served upon any body corporate a notice requiring them to deliver to those commissioners within a specified time, being not less than twenty-one days, a copy, certified by a duly authorised officer of such body, of the whole of, or any specified class of entries in, any register containing the names of the holders of any securities issued by them.

(2) On delivery of the copy in accordance with the notice payment shall be made therefor at the rate of five shillings in respect of each one hundred entries.

(3) A notice under this section may be served by post.

(4) Where a notice served under this section is not complied with, the body in question shall, unless it is proved to the satisfaction of the court that it was not reasonably possible to comply with the notice, be liable to a penalty not exceeding fifty pounds and if after judgment has been given for that penalty the copy still remains undelivered, shall be liable to a further penalty of the like amount for every day during which the default continues.

(5) In this section the expression "security" includes shares, stock, debentures and debenture stock and the expression "entry" means, in relation to any register, so much thereof as relates to the securities held by any one person.

24.[2] Notwithstanding that an appeal to the special commissioners is pending against an assessment to income tax under Schedule D, to super-tax or to sur-tax, such part of the tax assessed as appears to the special commissioners not to be in dispute shall be collected and paid in all respects as if it were tax charged by an assessment in respect of which no appeal was pending, and on the determination of the appeal any balance of tax chargeable in accordance with the determination shall be paid, or any tax overpaid shall be repaid, as the case may require.

25.—(1) All or any of the sums due in respect of income tax from any one person and payable to any one collector (being sums which are by law recoverable summarily) may, whether or not they are due under one assessment, be included in the same complaint, summons, order, warrant or other document required by law to be laid before justices or to be issued by justices, and every such document as aforesaid shall, as respects each such sum, be construed as a separate document and its invalidity as respects any one such sum shall not affect its validity as respects any other such sum.

(2) Where the income tax due under any assessment is payable by instalments and the sum for the time being due and payable in respect of any of those instalments is less than fifty pounds, that sum shall be recoverable summarily under section thirty of the Finance Act, 1924, notwithstanding that the total sum for the time being due and payable under the assessment is equal to or exceeds fifty pounds, and it is hereby declared that the reference in section twenty-two of the Finance Act, 1928, to the provisions of the Income Tax Acts includes a reference to this subsection.

(3) If a collector, who has commenced summary proceedings for the recovery of any income tax, dies or otherwise ceases for any reason to hold office as such, the proceedings may be continued in his name by any of his successors.

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[2] Applied to appeals to general commissioners by Act of 1942, Tenth Sched., para. 4 (2).

In cases to which this subsection applies notice of the change shall as soon as may be be given by the successor to the person against whom the proceedings are pending.

26.—(1) The amount of sur-tax payable in respect of the total income of an individual for the year of assessment in which he dies shall not exceed the amount of sur-tax which would have been payable if income tax had been chargeable for that year at the same rates as for the year preceding that year, and all such adjustments and repayments of tax shall be made as may be required in order to give effect to the provisions of this section.

(2) This section shall apply as respects sur-tax charged for the year 1929—30 or for any subsequent year.

Valuation, Parishes for Purposes of Assessment, Values in London, etc.

27.—(1) There shall be a quinquennial revaluation of all properties in Great Britain in respect of which income tax is chargeable under Schedules A and B, and accordingly the annual values of all such properties shall be determined afresh for the purpose of assessment for the year 1931—32, and for each fifth succeeding year of assessment, in accordance with the enactments and rules applicable to the said Schedules respectively as modified by the next succeeding section.

(2) A year of assessment for which a revaluation of properties is directed by this section to be made is in this Act referred to as "a year of revaluation," and may be so referred to in any subsequent enactment relating to income tax and the year preceding a year of revaluation is in this Act referred to as "the preparatory year."

(3) The annual value of any property which has been adopted for the purpose of income tax under Schedules A and B for any year of assessment shall be taken as being the annual value of that property for the same purpose for the next year of assessment, unless that year is a year of revaluation.

28.—(1) The provisions of this section, and, subject as hereinafter provided, the provisions of the First Schedule to this Act, shall have effect, so far as regards England, for the purposes of enabling the annual values of properties on which assessments are to be based for a year of revaluation to be determined during the preparatory year and of enabling assessments to income tax under Schedules A and B for a year of revaluation to be made as soon as may be after the commencement of that year, and for those purposes all things necessary to be done for determining the said annual values, and all things preliminary to the making of any such assessments, may be done as well at any time during the preparatory year as at any time during the year of revaluation:

Provided that the provisions contained in Part I of the First Schedule to this Act shall not apply as regards the administrative county of London.

(2) The assessments to income tax under Schedules A and B for a year of revaluation shall, so far as may be, be made on the basis of the annual values determined in accordance with this section and the Schedule therein referred to for the preceding year:

Provided that any person who proves to the satisfaction of the General Commissioners that the annual value for a year of revaluation of any property in respect of which he has been assessed for that year is less than the annual value on which the assessment was based, shall be entitled to a reduction of the assessment to an amount based on the annual value for the year of

revaluation estimated in accordance with the enactments and rules applicable to assessments under Schedule A or Schedule B, as the case may be.

29. . . .

(2) . . . section ninety of the Income Tax Act, 1918, shall, as from the first day of April, nineteen hundred and thirty, have effect as if for subsection (1) thereof (which defines parishes for purposes of assessment by reference to parishes for the purposes of poor law administration) the following subsection were substituted, that is to say:—

"(1) Subject to the provisions of this subsection, the parishes for which assessments of the tax are to be made and for which assessors and collectors are to be appointed shall in England, elsewhere than in the City of London, be the parishes for the time being existing for the purposes of local government administration.

"No alteration of a parish for the purposes of local government administration shall take effect for the purposes of this Act until the date hereinafter mentioned, that is to say—

(i) in the case of a parish outside the administrative county of London, the commencement of the next year of assessment which is a preparatory year:

Provided that for purposes relating to the assessment and collection of tax (including the appointment of assessors and collectors) for that year, the parish shall be deemed to continue unaltered:

(ii) in the case of a parish in the administrative county of London, the commencement of the next year of assessment which is a year of revaluation.

"In this subsection the expression 'parish for the purposes of local government administration' means, in the case of the administrative county of London, a parish as defined in section five of the Interpretation Act, 1889, and elsewhere, a parish as defined in section sixty-eight of the Rating and Valuation Act, 1925, for the purposes of any Act other than that Act; and the expression 'a year of revaluation' means a year for which the annual values of properties in respect of which income tax is chargeable under Schedules A and B are required to be determined afresh."

. . . . . .

31.—(1) As from the sixth day of April, nineteen hundred and thirty one, section forty-five of the Valuation (Metropolis) Act, 1869, shall cease to have effect in so far as it provides that the valuation list for the time being in force shall be conclusive evidence of values for the purposes of the Income Tax Acts, and as from the said date the annual value of any property in the administrative county of London shall, for the purposes of those Acts and subject to the provisions of this Act, be ascertained in accordance with the enactments applicable in the case of properties suitate elsewhere in England. . . .

32.—(1) When the assessment committee of any assessment area in the administrative county of London have in the year nineteen hundred and thirty, or any subsequent year, finally approved a new valuation list for that area, or any part thereof, the clerk of the committee shall, so soon as may be, and in any case before the first day of April next following the final approval of the list, transmit to the surveyor of taxes of the district which includes that area, or part of an area, all returns made in pursuance of sections fifty-five and fifty-six or in pursuance of section fifty-seven of the Valuation (Metropolis) Act, 1869, and where any such return so transmitted to the

surveyor contains all particulars necessary for making a correct assessment to income tax in respect of the annual value of the property to which it relates, it shall be deemed to be a statement of the annual value thereof made for the purposes of assessment under Schedules A and B of the Income Tax Act, 1918.

(2) In the said section fifty-five, for the words from "such statement" to the end of the section there shall be substituted the words "a return in such form as may be prescribed by the Minister of Health, in pursuance of his powers in that behalf, and containing such particulars as may be reasonably required for the purpose of carrying out this Act and the Acts incorporated therewith."

(3) Returns transmitted to a surveyor of taxes in accordance with subsection (1) of this section may be retained by him until the first day of July next following the first day of April referred to in that subsection, but the clerk of the assessment committee shall be entitled at any time to have access to those returns and to require that any particular return which he may need for the performance of his duties shall be redelivered to him.

(4) The provisions of subsections (2) and (3) of section forty-three of the Rating and Valuation Act, 1925 (which relate to the furnishing of copies of lists and of tax assessments), shall extend to the administrative county of London, with the substitution in the said subsection (2) of the words "to be a true copy or extract" for the words "in accordance with this section," and with the substitution in the said subsection (3) of the words "The London County Council and any assessment committee, or" for the words "Any county valuation committee, assessment committee, or."

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PART VI—MISCELLANEOUS AND GENERAL

53. . . .

(2) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(5) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) This Act may be cited as the Finance Act, 1930.

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FIRST SCHEDULE

PROCEDURE IN CONNECTION WITH THE DETERMINATION OF ANNUAL VALUES OF PROPERTIES FOR THE PURPOSES OF ASSESSMENT FOR A YEAR OF REVALUATION.[1]

PART I

Provisions applicable to England, exclusive of the Administrative County of London

1. The General Commissioners shall at the commencement of the preparatory year appoint persons to be assessors of income tax for the year of revaluation, so far as regards income tax chargeable under Schedules A and B, and issue the necessary instructions to the assessors so appointed, and appoint a day not later than the twentieth day of July next following for them to appear before the General Commissioners and bring in certificates of their

[1] See s. 28 (1).

assessments of annual values for the purposes of assessments for the year of revaluation:

2. As soon as may be after the appointment of assessors under the last preceding paragraph, general and particular notices shall be issued requiring the delivery of statements containing the particulars prescribed by the Income Tax Acts, and the provisions of the Income Tax Acts relating to notices to deliver, the delivery of, and penalties for neglecting to deliver, statements and declarations, shall apply for the purposes of, and in relation to, such notices.

3. The statements so to be prepared and delivered shall contain particulars relative to the year preceding the year of revaluation and the annual values for the purposes of assessments for the year of revaluation shall, so far as may be, be estimated and determined as for the preparatory year.

4. The provisions of sections one hundred and twenty and one hundred and twenty-five of the Income Tax Act, 1918 (which relate to the allowance of assessments by General Commissioners and to additional assessments, respectively), shall, with any necessary modifications, apply with regard to the annual values to be estimated and determined in accordance with the provisions of this Act for the purposes of assessments for a year of revaluation and the General Commissioners shall cause notice to be given of such assessments of annual values.

5. The provisions of subsections (1) and (2) of section one hundred and thirty-four of the Income Tax Act, 1918 (which relate to notices of assessments and of the time for hearing appeals therefrom), and the provisions of the Income Tax Acts relating to appeals against assessments to income tax under Schedule A shall, with any necessary modifications, apply to notices to be given and to appeals in respect of annual values assessed in accordance with the provisions of this Act for the purposes of assessments for a year of revaluation.

Part II

Provisions applicable to all England

1. Where the annual value of any property is to be determined as for the preparatory year, the General Rule of No. I of Schedule A shall have effect as if the seven years therein referred to were the seven years ending immediately before the commencement of the preparatory year.

2. Subject to the provisions of the next succeeding paragraph, the period within which any person aggrieved—

(a) in the case of property outside the administrative county of London, by the amount of any assessment of annual value made in accordance with the provisions of this Act for the purposes of assessment to income tax under Schedule A for a year of revaluation, or

(b) in the case of property in the administrative county of London, by the amount of any assessment to income tax under Schedule A made in any first assessment for a year of revaluation,

shall be entitled to appeal, shall be forty-two days instead of twenty-one days after the date of the notice of such assessment.

3. Any occupier of any property, or any owner or other person in receipt of the rent of any property, although not the occupier thereof, who is aggrieved by the amount of the annual value of the property as assessed shall, if a notification of the value assessed was not delivered to him, be entitled to appeal against any assessment to income tax under Schedule A in respect of that property for the year of revaluation, if within twelve months after the end of that year he gives to the Surveyor notice in writing of his intention to

appeal, and on any such appeal the Commissioners may confirm or amend the assessment, as the case may require, and the provisions of the Income Tax Acts relating to appeals against assessments shall, with any necessary modifications, apply to appeals under this paragraph:

Provided that nothing in this paragraph shall affect the collection or recovery of any tax assessed and charged, but where any assessment is reduced upon an appeal under this paragraph, any tax overpaid shall be repaid.

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THE FINANCE ACT, 1931
(21 & 22 GEO. 5, c. 28)

[31st July, 1931]

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PART II—INCOME TAX

6. (*Higher rates of income tax for* 1930—31.)—Income tax for the year 1930—31 in respect of the excess of the total income of an individual over two thousand pounds shall be charged at rates in the pound which respectively exceed the standard rate by the amounts specified in the second column of the following table:—

In respect of the first five hundred pounds of the excess ...	One shilling.
In respect of the next five hundred pounds of the excess ...	One shilling and threepence.
In respect of the next one thousand pounds of the excess..	Two shillings.
In respect of the next one thousand pounds of the excess...	Three shillings.
In respect of the next one thousand pounds of the excess...	Three shillings and sixpence.
In respect of the next two thousand pounds of the excess ..	Four shillings.
In respect of the next two thousand pounds of the excess...	Five shillings.
In respect of the next five thousand pounds of the excess...	Five shillings and sixpence.
In respect of the next five thousand pounds of the excess...	Six shillings.
In respect of the next ten thousand pounds of the excess ...	Six shillings and sixpence.
In respect of the next twenty thousand pounds of the excess	Seven shillings.
In respect of the remainder of the excess	Seven shillings and sixpence.

7.—(1) The provisions of Rule 20 of the General Rules, which authorise the deduction of the appropriate tax from any dividend paid by a body of persons, shall, in relation to a dividend paid by any body of persons, whether before or after the commencement of this Act, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said body which have been charged to tax or which, under the provisions of the Income Tax Acts, would fall to be included in computing the liability of the said body to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period.

(2) Subject as hereinafter provided, a dividend paid by a body of persons, whether before or after the commencement of this Act, shall, to the extent to which it is paid out of such profits and gains as are mentioned in subsection (1) of this section, be deemed, for all the purposes of the Income Tax Acts, to

represent income of such an amount as would, after such deduction of tax as is authorised by the provisions of the said Rule 20, be equal to the net amount received:

Provided that the provisions of this subsection shall not apply to a preference dividend *within the meaning assigned to that expression by subsection (4) of section twelve of the Finance Act*, 1930,[1] and shall have effect subject to the provisions of subsection (3) of that section.

9. (*Amendment of Act of* 1923, *s.* 18.)— . . . Section eighteen of the Finance Act, 1923 (which gives relief from double taxation in the case of profits arising from the business of shipping), shall apply in relation to profits or gains arising from the business of air transport as it applies in relation to profits or gains arising from the business of shipping, and accordingly the said section shall have effect as if—

(1) in paragraph (a) of subsection (1) thereof, after the words "from the business of shipping," there were inserted the words "or from the business of air transport"; and

(2) after the word "ships," in subsection (4) thereof, there were inserted the words "and the expression 'business of air transport' means the business carried on by an owner of aircraft."

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PART IV—MISCELLANEOUS AND GENERAL

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44.—(2) Part II of this Act shall be construed as one with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment including this Act.

(4) This Act may be cited as the Finance Act, 1931.

. . . . . .

THE FINANCE (No. 2) ACT, 1931
(21 & 22 GEO. 5, c. 49)

[5th October, 1931]

. . . . . .

PART II—INCOME TAX

7. (*Higher rates of income tax for* 1930—31.)—Section six of the Finance Act, 1931, . . . shall have effect as if each of the amounts specified in the second column of the Table contained in that section were increased by ten per cent. . . .

10. Where in pursuance of an arrangement which is being carried out under section sixty of the Finance Act, 1916 (which relates to the conversion of Government securities), the Treasury direct that the provisions of this section

[1] Words substituted, Act of 1940, s. 20 (2).

shall have effect, any person who is carrying on a trade which consists wholly or partly in dealing in securities and who in pursuance of the arrangement exchanges securities to which he is beneficially entitled for other securities (whether or not any additional consideration is given for the exchange) shall, unless he gives notice in writing to the surveyor not later than the end of the year of assessment next following the year of assessment in which the exchange takes place that he desires not to be so treated, be treated for income tax purposes (except as regards any income tax payable in respect of interest), both at the time of the exchange and thereafter, as if the exchange had not taken place, and in that case the produce of any subsequent realisation of securities received by him under the exchange (together with any additional consideration, or the appropriate part of any additional consideration, received by him thereunder) shall be treated as the produce of the realisation of the corresponding securities surrendered by him under the exchange.

PART III—PROVISIONS AS TO FIVE PER CENT. WAR LOAN, 1929—1947

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16. Where a holding in the Loan which is continued under this Part of this Act beyond the redemption date is in the beneficial ownership of a person who is carrying on a trade which consists wholly or partly in dealing in securities, that person shall, if he gives notice in writing to the surveyor not later than the end of the year of assessment next following the year of assessment in which the redemption date falls, that he desires to be so treated, be treated for the purposes of the Income Tax Acts as having changed his investment on the redemption date, but if he gives no such notice he shall, except with respect to the tax on the interest on the holding, be for those purposes treated, both then and thereafter, as not having changed his investment, and in that case the produce of any subsequent realisation of the whole or any part of the continued holding (which holding shall, for the purpose of this provision be deemed to include any bonus stock or bonus bonds issued in respect of the continuance of the holding) together with any additional consideration, or the appropriate part of any additional consideration, received by him in connection with the continuance, shall be treated as the produce of the realisation of the whole or the appropriate part of the original holding.

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PART IV—MISCELLANEOUS AND GENERAL

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22.—(1) Any securities issued by the Treasury under any Act may be issued with the condition that—

(a) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax; and

(b) so long as the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future.

(2) For the purposes of subsections (2) and (3) of section forty-six of the Income Tax Act, 1918 (which relates to securities issued free from tax) any securities issued by the Treasury with the condition mentioned in subsection (1) of this section shall be deemed to be such securities as are mentioned in subsection (1) of the said section forty-six.

23.—(1) It is hereby declared that the Treasury have power under subsection (2) of section forty-nine of the Income Tax Act, 1918, to direct that securities issued by them under section sixty of the Finance Act, 1916 (which relates to the conversion of Government securities), shall be issued subject to the condition that the interest thereon shall be paid without deduction of income tax.

(2) In subsection (3) of the said section forty-nine, the words "securities issued in connection with any Government loan raised for the purposes of the present war" shall be deemed to include any securities issued subject to such a condition as aforesaid.

. . . . . .

25.—(1) . . .

(2) This Act, so far as it relates to income tax, shall be construed as one with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment including (save where the context otherwise requires) this Act.

(4) This Act may be cited as the Finance (No. 2) Act, 1931.

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THE FINANCE ACT, 1932
(22 & 23 GEO. 5, c. 25)

[16th June, 1932]

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PART II—INCOME TAX

17.—(1) Where a person has ceased to hold any office or employment and any pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment of income tax and in the case of a pension or annual payment which is paid by or on behalf of a person outside the United Kingdom shall be assessed and charged by reference to the provisions of Rule 2 of the Rules applicable to Case V of Schedule D and in any other case shall be assessed and charged under Schedule E.

(2) For the purpose of removing doubts, it is hereby declared that the expressions "annuity" and "pension" in the charging provision of Schedule E and in subsection (1) of section seventeen of the Finance Act, 1923, include respectively an annuity and a pension which is paid voluntarily or is capable of being discontinued.

(3) The expression "earned income" in subsection (3) of section fourteen of the Income Tax Act, 1918, shall be deemed to include any annuity, pension or annual payment to which this section applies.

18.—(1) Where, under Rule 6 of the Rules applicable to Cases I and II of Schedule D, a deduction in respect of wear and tear of any machinery or

plant during any year of assessment is allowed either in charging profits or gains for the year, or, where the machinery or plant is let, by the repayment of a portion of the tax assessed and charged in respect of the machinery or plant and deducted from the rent, the Commissioners by whom the deduction is allowed shall, either in charging the profits or gains, or by means of such repayment as aforesaid, as the case may be, allow an additional deduction equal to *one-fifth*[1] of the amount of the deduction allowed under the said Rule 6 as aforesaid, but excluding from that amount any sum included therein by virtue of paragraph (3) of the said Rule.

(2) Where, for any purpose of the Income Tax Acts, account is required to be taken of any deductions allowed, or deemed to have been allowed in respect of wear and tear for any years prior to the year of assessment, or of the aggregate of the amount of those deductions and of any such deduction for the year of assessment, the additional deduction under this section for any of the said years shall for that purpose be treated as if it were part of the deduction in respect of wear and tear for that year.

19.—(1) Where a loss sustained by a person has been carried forward under section thirty-three of the Finance Act, 1926, and as regards that loss or any part thereof a deduction or set off cannot be given under that section from or against the profits or gains on which the person is assessed under Schedule D for the six years following the year in which the loss was sustained owing to the allowance in the assessments for those years of deductions for wear and tear of machinery or plant under Rule 6 of the Rules applicable to Cases I and II of Schedule D, then so much of the loss in respect of which relief has not been given as represents the amount in respect of which relief could have been given but for the allowance aforesaid shall be further carried forward and deducted or set off under and in accordance with the provisions of the said section as if, in relation to the loss so carried forward, for references in the said section and in section nineteen of the Finance Act, 1928, to the six years of assessment following the year in which the loss was sustained there were subsituted references to all following years of assessment:

Provided that—

(a) this section shall not apply in relation to the carrying forward, deduction or set off of a loss under section thirty-three of the Finance Act, 1926, as applied by section twenty-nine of the Finance Act, 1927;

(b) the same deduction for wear and tear of machinery or plant to which effect is given in any year of assessment shall not be taken into account more than once for the purposes of this section.[2]

(2) Any relief given under section thirty-three of the Finance Act, 1926, from an assessment shall be given in respect of a loss sustained in any year within the six years immediately preceding the year of assessment before it is given in respect of a loss sustained in any year not within those six years.

20. Section thirty-two of the Income Tax Act, 1918 (which provides for relief from tax in respect of life insurance premiums, etc.), shall be extended so as to apply to insurances made and annuities contracted for with underwriters, being members of Lloyd's or of any other association of underwriters approved by the Board of Trade, who comply with the requirements set forth in the Eighth Schedule to the Assurance Companies Act, 1909, as that section applies to insurances made and annuities contracted for with such an insurance company as is mentioned therein.

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[1] Substituted for "one-tenth," Finance Act, 1932, s. 22

[2] See Income Tax Act, 1945, s. 55.

PART V—MISCELLANEOUS

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31.—(2) Part II of this Act shall be construed as one with the Income Tax Acts.

(3) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

. . . . . .

(5) This Act may be cited as the Finance Act, 1932.

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THE FINANCE ACT, 1933
(23 & 24 GEO. 5, c. 19)

[28th June, 1933]

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PART II—INCOME TAX

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31.—(1) In the application to any company or society of any provision or rule relating to profits or gains chargeable under Case I of Schedule D (which relates to trades) or under Rule 4 of the Rules applicable to Case III of Schedule D (which relates to the profits of certain cattle dealers and milk dealers) any reference to profits or gains shall be deemed to include a reference to a profit or surplus arising from transactions of the company or society with its members which would be included in profits or gains for the purposes of that provision or rule if those transactions were transactions with non-members, and the profit or surplus aforesaid shall be determined for the purposes of that provision or rule on the same principles as those on which profits or gains arising from transactions with non-members would be so determined.

(2) Subsection (4) of section thirty-nine of the Income Tax Act, 1918 (which exempts certain registered societies from income tax under Schedules C and D), shall cease to have effect.

(3) It is hereby declared that in computing, for the purposes of any provision or rule mentioned in subsection (1) of this section, any profits or gains of a company or society which include any income which is chargeable to tax by virtue of the foregoing provisions of this section, there are to be deducted as expenses any sums which—

(a) represent a discount, rebate, dividend, or bonus granted by the company or society to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company or society, being transactions which are taken into account in the said computation; and

(b) are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to the amount of any share or interest in the capital of the company or society.

(4) A registered society whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom,

shall be entitled to relief under section thirty-three of the Income Tax Act, 1918 (which relates to relief in respect of expenses of management), in the same manner and to the same extent as if the business of the society were the business of a company.

(5) Where the profits or gains of a company or society include any income which is chargeable to tax by virtue of the provisions of subsection (1) or subsection (2) of this section, but is not otherwise chargeable to tax, the following transitional provisions shall have effect:—

(a) where the computation of profits or gains is required to be made by reference to any year or period other than the year of assessment, the computation for that year or period shall be made in accordance with the provisions of subsection (1) of this section, notwithstanding that those provisions were not in force in that year or period or some part thereof;

(b) where a claim is made for a deduction in respect of the wear and tear or replacement of any machinery or plant under Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D, paragraph (6) of the said Rule 6, and the said Rule 7, shall have effect as if there had been allowed, for all years of assessment prior to the year 1933—34, all such deductions for wear and tear (but not including any additional allowance under section eighteen of the Finance Act, 1932) as would have been allowable in charging profits or gains which would have been chargeable if subsections (1) and (2) of this section had been in force throughout those years; and, in computing the amount of profits or gains to be charged, no sum shall be deducted (otherwise than under the said Rule 7) in respect of the cost of the renewal or replacement of any machinery or plant exceeding the amount of such cost reduced by the total amount of all such deductions for wear and tear as would have been allowable as aforesaid;

(c) no deduction shall be carried forward from the year 1932—33 under paragraph (3) of the said Rule 6 and no loss or portion of a loss, which was sustained before the sixth day of April, nineteen hundred and thirty-three, shall be carried forward under or by reference to section thirty-three of the Finance Act, 1926, except so far as the deduction or loss, or portion of a loss, as the case may be, related to transactions any profits or gains from which were chargeable with tax for the said year 1932—33 or previous years.

(6) Where any profits or income of a registered society arising in the year 1933—34 have, by virtue of the provisions of this section, ceased to be exempt from income tax chargeable by deduction and the tax has not been deducted therefrom, an assessment may be made on the society under Case III of Schedule D as if the profits or income were mentioned in Rule 1 of the Rules applicable to that Case and first arose in the said year.

(7) In this section the expression "company or society" means any incorporated company or society whether incorporated in the United Kingdom or elsewhere, and the expression "registered society" means a society registered under the Industrial and Provident Societies Acts, 1893 to 1928, or under the enactments in force in Northern Ireland known as the Industrial and Provident Societies Acts (Northern Ireland), 1893 to 1929.

22.—(1) Notwithstanding anything contained in the Income Tax Acts, any share interest or loan interest paid by a registered society shall be paid without deduction of income tax:

Provided that this subsection—

(a) shall not apply to any share interest or loan interest payable to a

person whose usual place of abode is not within the United Kingdom; and

(b) shall not render improper any such deduction made before the first day of October, nineteen hundred and thirty-three, which would would have been a proper deduction if this subsection had not been enacted.

(2) Any share interest or loan interest paid by a registered society without deduction of income tax shall be chargeable under Case III of Schedule D as if it were mentioned in Rule 1 of the rules applicable to that Case.

(3) Where at any time, by virtue of the last foregoing subsection, the income of a person from any source becomes chargeable as therein provided not having previously been chargeable by direct assessment on that person, the provisions of paragraph (ii) of the proviso to section thirty of the Finance Act, 1926 (which relates to charge of tax where a person acquires a new source of income in any year of assessment) shall apply as if the source of that income were a new source of income acquired by that person at that time.

(4) Subject as hereinafter provided—

(a) a registered society shall be entitled to have the amount of income tax which, but for any relief under this paragraph, it would be liable ultimately to bear for any year of assessment, reduced by a sum representing tax on the amount of share interest or loan interest paid in that year by the society without deduction of tax in accordance with the foregoing provisions of this section; and

(b) where due relief under this subsection cannot be given for any year of assessment in respect of any part of the share interest or loan interest so paid by a society in that year, section nineteen of the Finance Act, 1928 (which relates to allowance for certain purposes of interest payments as losses), shall have effect as if the society had been assessed to tax for that year under Rule 21 of the General Rules in respect of the payment of that part of the share interest or loan interest, and had paid tax under that assessment on the amount of the payment:

Provided that this subsection shall not apply to any loan interest in respect of or by reference to which a deduction or relief is allowable to the society otherwise than under this subsection.

(5) Subsections (1) and (2) of section forty-one of the Finance Act, 1927 (which relate to the making and determination of claims for certain deductions of tax), shall apply to claims for relief under paragraph (a) of the last foregoing subsection as they apply to claims for deductions of tax and as if the Special Commissioners were the commissioners concerned, and any relief due under the said paragraph (a) may be given either by discharge or reduction of any assessment, or by repayment, or by all or any of those means, as the case may require.

(6) On or before the first day of May in each year (commencing with the year nineteen hundred and thirty-four), every registered society shall deliver to the surveyor for the district in which its registered office is situate a return in such form as the Commissioners of Inland Revenue may prescribe, showing—

(a) the name and place of residence of every person to whom loan interest (being loan interest to which subsection (4) of this section applies) amounting to the sum of five pounds or more has been paid by the society in the year of assessment which ended next before the said first day of May; and

(b) the amount of such loan interest paid in that year to each of those persons;

and if such a return is not duly made as respects any year of assessment the society shall not be entitled to any relief under this section in respect of any payments of loan interest which it was required to include in the return, and the amount of any relief or allowance which has been given in respect of any such payments may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from the society accordingly.

(7) For the purposes of this section—

(a) the expression "registered society" has the same meaning as in the last preceding section;

(b) the expression "share interest," in relation to a registered society, means any interest, dividend, bonus, or other sum payable to a shareholder of the society by reference to the amount of his holding in the share capital of the society;

(c) the expression "loan interest," in relation to a registered society, means any interest payable by the society in respect of any mortgage, loan, loan stock, or deposit;

(d) references to the payment of share interest or loan interest shall include references to the crediting of such interest.

33. Where, on a claim for relief under section thirty-three of the Income Tax Act, 1918, made by a company, society, or bank for any year of assessment after the year 1932–33 in respect of the sums disbursed by it as expenses of management (including commissions) for that year, relief is disallowed in respect of the whole or part of those sums by reason only of the provisions of proviso (a) to subsection (1) of the said section, the amount in respect of which relief has been so disallowed may be carried forward and treated for the purpose of the said section as if it had been disbursed as aforesaid for any of the six years of assessment next following:

Provided that relief in respect of an amount so carried forward shall be given for the first year of assessment next following, in so far as relief can be so given in accordance with the provisions of the said section in respect of that amount as well as in respect of the sums actually disbursed as aforesaid for that year, and so far as it cannot be so given, then for the next year of assessment, and so on.

34.—(1) The provisions of this section shall have effect in relation to sur-tax due from any person (in this section referred to as the "beneficiary") to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.

(2) If any sur-tax charged in respect of the income of the beneficiary is not paid before the expiration of six months from the date when it became due and payable, the Special Commissioners may at any time thereafter, so long as the said sur-tax remains unpaid, cause to be served on the trustees of the trust a notice in writing that the said sur-tax remains unpaid.

(3) Where such a notice as aforesaid is served in accordance with the provisions of this section on the trustees of the trust it shall be the duty of the trustees, as soon as may be, and, if necessary from time to time to pay the Commissioners of Inland Revenue in or towards satisfaction of the said sur-tax from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.

(4) Any payments made out of income by trustees on account of sur-tax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.

(5) Any sum which the trustees are liable to pay by virtue of the provisions of this section shall be recoverable from them as a debt due to the Crown.

(6) Service of any notice under this section may be effected by sending it by post to the person on whom it is to be served by letter addressed to him at his usual or last known place of abode, and, where there are two or more trustees under the trust, the notice shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.

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PART V—MISCELLANEOUS AND GENERAL

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47.—(1) This Act may be cited as the Finance Act, 1933.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

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THE ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) ACT, 1933

(23 & 24 GEO. 5, c. 36)

[28th July, 1933]

. . . . . .

4.—(1) Subject to and in accordance with such rules of court as may after the passing of this Act be made under section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, any debt due to the Crown may, without prejudice to the recovery thereof by means of an information in the High Court, be recovered by proceedings instituted by writ of summons.

(2) Subject to the provisions of any enactment limiting the jurisdiction of the county court, whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise, proceedings by the Crown may be instituted in a county court, and accordingly the power of the Attorney-General and any power conferred by any enactment upon a Government department or upon an officer of the Crown as such, to institute proceedings by the Crown shall include power to institute such proceedings in a county court.

(3) Subject as hereinafter provided all rules of law and enactments regulating the removal of proceedings from a county court into the High Court and the remittal of proceedings in the High Court to a county court shall apply respectively to the removal of proceedings by the Crown in a county court and to the remittal of proceedings by the Crown in the High Court instituted by writ of summons:

Provided that an order for the remittal to a county court of any proceedings by the Crown in the High Court shall not be made without the consent of the Crown.

(4) Section one hundred and sixteen of the County Courts Act, 1888, (which makes provision with respect to costs in High Court cases which could have been commenced in the county court) shall not apply in the case of any proceedings by the Crown.

. . . . . .

7.—(1) In any civil proceedings to which the Crown is a party in any court having power to award costs in cases between subjects, and in any arbitration to which the Crown is a party, the costs of and incidental to the proceedings shall be in the discretion of the court or arbitrator to be exercised in the same manner and on the same principles as in cases between subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly:

Provided that—

(a) in the case of proceedings to which by reason of any enactment or otherwise the Attorney-General, a Government department or any officer of the Crown as such is required to be made a party, the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General, the department or officer of the Crown appears, and may in the exercise of its or his discretion order any other party to the proceedings to pay the costs of the Attorney-General, department or officer, whatever may be the result of the proceedings; and

(b) nothing in this section shall affect the power of the court or arbitrator to order, or any enactment providing for, the payment of costs out of any particular fund or property, or any enactment expressly relieving any department or officer of the Crown of the liability to pay costs.

(2) In this section the expression "civil proceedings" includes proceedings by petition of right and proceedings by the Crown in the High Court or a county court for the recovery of fines or penalties, and references to proceedings to which the Crown is a party include references to proceedings to which the Attorney-General or any Government department or any officer of the Crown as such is a party, so, however, that the Crown shall not be deemed to be a party to any proceedings by reason only that the proceedings are proceedings by the Attorney-General on the relation of some other person.

(3) This section shall apply to proceedings pending at the commencement of this Act.

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10.—(1) This Act may be cited as the Administration of Justice (Miscellaneous Provisions) Act, 1933.

(2) This Act shall not extend to Scotland or to Northern Ireland.

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THE FINANCE ACT, 1934
(24 & 25 Geo. 5, c. 32)

[12th July, 1934]

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Part II—Income Tax

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21.—*Income tax on certain rents, mining royalties, etc.*—(1) Where rent is payable in respect of any land the property in which is not separately assessed and charged under Schedule A, or in respect of any easement, and—

(a) the land or easement is used, occupied or enjoyed in connection with any of the concerns specified in Rules 1, 2 and 3 of No. III of Schedule A; or

(b) the lease or other agreement under which the rent is payable provides for the recoupment of the rent by way of reduction of royalties or payments of a similar nature in the event of the land or easement being used, occupied or enjoyed as aforesaid;

the rent shall be charged with tax under Schedule D and shall, subject to the provisions of this section, be treated for the purpose of such of the provisions of the Income Tax Acts as refer to royalties paid in respect of the user of a patent as if it were such a royalty;

Provided that, where the rent is rendered in produce of the concern, it shall, instead of being treated as aforesaid, be charged under Case III of Schedule D as if it were mentioned in Rule 1 of the Rules applicable to that Case, and the value of the produce so rendered shall be taken to be the amount of the profits or income arising therefrom.

(2) Subject to the provisions of section two of the Provisional Collection of Taxes Act, 1913, a deduction from a payment of rent made by any person on account of income tax at any time before the passing of this Act, which would have been a legal deduction if the provisions of this section had been in force at that time, shall be deemed for all purposes (including all the purposes of legal proceedings instituted before the passing of this Act) to have been a legal deduction to which all the provisions of Rule 19 or Rule 21 of the General Rules, as the case may be, were applicable.

(3) The provisions of subsection (2) of section two hundred and eleven of the Income Tax Act, 1918, shall have effect as if this section had come into operation on the sixth day of April, nineteen hundred and thirty-four.

(4) For the purpose of this section—

(a) the expression "land" means lands, tenements, hereditaments and heritages;

(b) the expression "easement" includes any right, privilege or benefit in, over or derived from land;

(c) the expression "rent" includes a rent service, rent charge, fee farm rent, feu duty or other rent, toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise, but does not include any of the payments enumerated in Rules 1 to 6 of No. II of Schedule A.

(5) Rule 5 of No. III of Schedule A (which provides for the computation of the annual value of the produce of any such concern as aforesaid) shall cease to have effect.

22. ***Exemption for Issue Department of Reserve Bank of India.***—Any profits or income accruing or arising to the Issue Department of the Reserve Bank of India constituted under an Act of the Indian Legislature called the Reserve Bank of India Act, 1934, shall be exempt from income tax.

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PART IV—MISCELLANEOUS AND GENERAL

30.—(1) This Act may be cited as the Finance Act, 1934.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended or applied by any subsequent enactment including this Act.

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THE ADMINISTRATION OF JUSTICE (APPEALS) ACT, 1934
(24 & 25 GEO. 5, c. 40)

[25th July, 1934]

1.—(1) No appeal shall lie to the House of Lords from any order or judgment made or given by the Court of Appeal . . . except with the leave of that Court or of the House of Lords.

(2) The House of Lords may by order provide for the hearing and determination by a Committee of that House of petitions for leave to appeal from the Court of Appeal:

Provided that section five of the Appellate Jurisdiction Act, 1876, shall apply to the hearing and determination of any such petition by a Committee of the House as it applies to the hearing and determination of an appeal by the House.

(3) Nothing in this section shall affect any restriction existing, apart from this section, on the bringing of appeals from the Court of Appeal to the House of Lords.

2.—(1) Every appeal from a judgment, direction, decision, decree or order of a judge of a county court given or made after such date as the Lord Chancellor may by order appoint, being an appeal under any of the enactments set out in the first column of Part I of the Schedule to this Act, shall lie to the Court of Appeal instead of to the High Court; and accordingly those enactments and the enactments set out in the first column of Part II of the said Schedule shall have effect in relation to any such appeal subject to the modifications respectively specified in the second column of those Parts of that Schedule . . .

3.—(1) This Act may be cited as the Administration of Justice (Appeals) Act, 1934 . . .

LIBRARY

SCHEDULE

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PART I—ENACTMENTS UNDER WHICH APPEALS ARE TO LIE TO COURT OF APPEAL, AND CONSEQUENTIAL AMENDMENTS

Enactment	Modification
. . .	. . .
Section fifteen of the County Courts (Amendment) Act, 1934.	For the words "High Court" wherever they occur there shall be substituted the words "Court of Appeal."
. . .	. . .

THE FINANCE ACT, 1935

(25 & 26 GEO. 5, c. 24)

[10th July, 1935]

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PART II—INCOME TAX

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19. *Exemption from, and reduction of, tax in certain cases.*—(1) An individual who proves that his total income does not exceed *one hundred and twenty*[1] pounds shall be entitled to exemption from income tax.

(2) An individual who, not being exempt as aforesaid, proves that his total income is less than *one hundred and thirty-five*[1] pounds, shall be entitled to have the amount of income tax payable in respect of his total income, if it would but for the provisions of this subsection exceed a sum equal to *one-quarter*[1] of the amount by which his total income exceeds *one hundred and twenty* pounds,[1] reduced to that sum.

(3) All such provisions of the Income Tax Acts as apply in relation to deductions of tax under section forty of the Finance Act, 1927, shall, with any necessary modifications, apply in relation to exemptions from or reductions of tax under this section.

26. *Deduction from profits of contributions paid to rationalise industry.*[2]—(1) Notwithstanding anything contained in Rule 3 of the Rules applicable to Cases I and II of Schedule D, where a person pays, wholly and exclusively for the purposes of a trade in respect of which he is chargeable under Case I of Schedule D, a contribution in furtherance of a scheme which is for the time being certified by the Board of Trade under this section, the contribution shall, in so far as it is paid in furtherance of the primary object of the scheme, be allowed to be deducted as an expense in computing the profits or gains of the said trade.

(2) The Board of Trade shall certify a scheme under this section if they are satisfied—

(a) that the primary object of the scheme is the elimination of redundant works or machinery or plant from use in an industry in the United Kingdom; and

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[1] Amounts substituted, No. 2 Act of 1945, s. 17 (3).

[2] See No. 2 Act of 1945, ss. 24–26.

(b) that the scheme is in the national interest and in the interest of the said industry as a whole; and

(c) that such number of persons engaged in the said industry as are substantially representative of the industry are liable to pay contributions in furtherance of the primary object of the scheme by agreement between them and the body of persons carrying out the scheme.

References in this subsection to an industry in the United Kingdom shall include references to the business carried on by owners of ships or of a particular class of ships, wherever the business is carried on, and in relation to that business references in this subsection to works or machinery or plant shall include references to ships.

(3) The Board of Trade shall cancel any certificate granted under this section if they cease to be satisfied as to any of the matters referred to in the last foregoing subsection.

(4) In the event of the repayment, whether directly or by way of distribution of assets on a winding-up or otherwise, of a contribution or any part thereof which has been allowed to be deducted under this section, the deduction of the contribution, or of so much thereof as has been repaid, shall be deemed to be an unauthorised deduction in respect of which an additional assessment shall be made under subsection (1) of section one hundred and twenty-five of the Income Tax Act, 1918, and notwithstanding anything contained in the Income Tax Acts the time within which such an additional assessment and any consequential assessment to surtax may be made shall not expire before the end of the third year following the year of assessment in which the repayment was made.

(5) For the purpose of this section a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

(6) In computing for the purposes of section thirty-three of the Finance Act, 1926 (which relates to relief in respect of certain losses), whether and to what extent a loss has been sustained by any person in the year 1934—35, or in the period which under section thirty-four of that Act would be taken to be the year preceding the year 1935—36, this section shall be deemed to have come into operation at the commencement of the year 1934—35, or of that period, as the case may be.

(7) The Board of Trade may at any time require the body of persons carrying out a scheme certified under this section to produce any books or documents of whatever nature relating to the scheme, and, if the requirement is not complied with, the Board may cancel the certificate.

(8) Anything required or authorised to be done under this section by the Board of Trade may be done by the President, a secretary, under-secretary, or assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

(9) In this section, the expression "contribution," in relation to a scheme, does not include a sum paid by a person by way of loan or subscription of share capital, or in consideration of the transfer of assets to him, or by way of a penalty for contravening or failing to comply with the scheme.

26. *Amendment as to assessment on change of office.*—(1) Where a person, on entering upon any office (in this section referred to as a "new office"), ceases to hold any other office (in this section referred to as an "old office") and—

(a) but for the provisions of this section the tax payable by him on the

emoluments of the said offices would have been computed by reference to the provisions of subsections (4) and (5) of section forty-five of the Finance Act, 1927; and

(b) his average monthly net emoluments arising from the new office for the first twelve months of his tenure thereof, or for such shorter period as his tenure thereof endures, do not exceed by more than twenty per cent. his average monthly net emoluments arising from the old office for the last twelve months of his tenure thereof, or for such shorter period as his tenure thereof endured; and

(c) the nature of the duties of the old and the new offices respectively was and is such as to require the holder thereof to devote substantially the whole of his time to the performance of those duties;

that person shall, on giving notice as hereinafter provided, be entitled to require that all his emoluments arising from the new office as well as from the old office shall be assessed as if they had arisen from one and the same office, and thereupon any assessment already made shall be adjusted accordingly and any tax overpaid shall be repaid.

(2) A person giving notice under this section shall give it in writing to the surveyor not later than the expiration of the eighteen months next after the end of the year of assessment within which he entered upon the new office.

(3) In this section—

(a) the expression "emoluments" has the same meaning as in section forty-five of the Finance Act, 1927;

(b) the expression "net emoluments" in relation to an office for any period means the emoluments of the office for that period after the deduction of any amount paid or borne for that period by the holder of the office which would be allowable under the provisions of the Income Tax Acts for the purpose of computing an assessment to income tax under Schedule E;

(c) the expression "office" means an office or an employment the emoluments of which are chargeable wholly under Schedule E.

(4) This section shall apply to any person who entered upon a new office in the year 1933—34 or the year 1934—35 as it applies to persons entering upon a new office in any subsequent year:

Provided that no assessment for any year before the year 1934—35 shall be adjusted under this section.

Part IV—Miscellaneous and General

35.—(1) This Act may be cited as the Finance Act, 1935.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

(4) Any reference in this Act to any other enactment shall be construed as as reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

. . . . . .

THE FINANCE ACT, 1936
(26 Geo. 5 & 1 Edw. 8, c. 34)

[16th July, 1936]

. . . . . .

Part II—Income Tax

. . . . . .

18. *Provisions for preventing avoidance of income tax by transactions resulting in the transfer of income to persons abroad.*[1]—For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows:—

(1) Where such an individual has by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all the purposes of the Income Tax Acts: . . .

(1A) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be the income of that individual for all the purposes of the Income Tax Acts.

In this subsection the expression "capital sum" means—

(a) any sum paid or payable by way of loan or repayment of a loan; and

(b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

(1B) The last two foregoing subsections shall not apply if the individual shows in writing or otherwise to the satisfaction of the Special Commissioners either—

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

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[1] Proviso to sub-s. 1 repealed, sub-ss. (1A), (1B) and (4A) added, and words in *italics* inserted in sub-s. 3 (d), Act of 1938, s. 28.

(2) For the purposes of this section an associated operation means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.

(3) An individual shall, for the purposes of this section, be deemed to have power to enjoy income of a person resident or domiciled out of the United Kingdom if—

(a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to inure for the benefit of the individual; or

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or

(c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or

(d) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, *or may, in the event of the exercise of any power vested in any other person, become entitled to the beneficial enjoyment of the income*; or

(e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

(4) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4A) For the purpose of this section any body corporate incorporated outside the United Kingdom shall be treated as if it were resident out of the United Kingdom whether it is so resident or not.

(5) For the purposes of this section—

(a) a reference to an individual shall be deemed to include the wife or husband of the individual;

(b) the expression "assets" includes property or rights of any kind, and the expression "transfer" in relation to rights includes the creation of those rights;

(c) the expression "benefit" includes a payment of any kind;

(d) references to income of a person resident or domiciled out of the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section twenty-one of the Finance Act, 1922, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person;

(e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(6) The provisions of the Second Schedule to this Act shall have effect for the purpose of carrying this section into effect and otherwise for supplementing the provisions of this section, and this section is referred to in that Schedule as "the principal section."

(7) The provisions of this section shall apply . . . in relation to transfers of assets and associated operations whether carried out before or after the commencement of this Act: . . .

18. *General amendments of 12 & 13 Geo. 5, c. 17, s. 21.*—(1) For the purposes of subsection (6) of section twenty-one of the Finance Act, 1922, a company shall be deemed to be under the control of not more than five persons—

(a) if any five or fewer persons together exercise, or are able to exercise, or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company; or

(b) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle them to receive the greater part of the amount so distributed; or

(c) if,—[a]

(i) on the assumption that the company is a company to which the said section twenty-one applies; or

(ii) on the assumption that the company and any other company or companies are companies to which the said section twenty-one applies,

more than half of the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it, for the purposes of the said section twenty-one) could be apportioned for those purposes among not more than five persons.

(2) In determining for the purposes of the said subsection (6) whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other person together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

For the purposes of this subsection—

(a) the expression "relative" means a husband, wife, ancestor, lineal descendant, brother or sister;

(b) a person shall be deemed to be the nominee of another person, if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this Act, is material in determining whether a company is or is not to be deemed to be under the control of not more than five persons.

(3) For the purpose of the provisions of the said section twenty-one and any provisions of this or any other Act relating thereto, the definition of the

[a] New para. (c) substituted, Finance Act, 1939, s. 13 (1).

expression "company" shall be extended so as to include any body incorporated in any part of the United Kingdom under any enactment, and in relation to any such body corporate other than a company within the meaning of the Companies Act, 1929, or any corresponding enactment in force in Northern Ireland, the said provisions shall have effect subject to the following modifications—

(a) references to winding-up shall include references to the dissolution or cancellation of the registry of the body corporate in any manner authorised by any rules, regulations or other instrument constituting or regulating the body corporate or any enactment applying to the body corporate; and

(b) references to an order or resolution for winding-up shall include references to the signing of any instrument, the making of any application or the doing of any other act which is authorised as aforesaid with a view to dissolving, or cancelling the registry of, the body corporate; and

(c) references to the liquidator shall include references to any person in charge of the winding-up of the affairs of the body corporate.

. . . . . .

(5) Where a notice of charge is served on a company or the liquidator of a company under subsection (3) of the said section twenty-one and the tax thereupon becoming payable is not paid by the company before the expiration of three months from the date of service or before the second day of January following the year of assessment (whichever is the later), the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the member on whom the tax was assessed.

20. *Amendments of 12 & 13 Geo. 5, c. 17, s. 21, as respects investment companies.*—(1) The following provisions of this section shall have effect as respects companies (hereafter in this section referred to as "investment companies") the income whereof consists mainly of investment income, that is to say, income which, if the company were an individual, would not be earned income as defined in subsection (3) of section fourteen of the Income Tax Act, 1918:

Provided that, for the purposes of this subsection, any income apportioned to a company under section twenty-one of the Finance Act, 1922, shall be deemed to be income of the company and to be investment income.

(2) For the purpose of subsection (1) of the said section twenty-one the sums which are to be regarded as income available for distribution among the members of an investment company, and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, shall include any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment, or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.

(3) Without prejudice to the provisions of the last foregoing section, an investment company shall be deemed for the purposes of subsection (6) of the said section twenty-one to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the company which would be available for distribution to members and loan creditors.

(4) Where an investment company is deemed by virtue of the last foregoing subsection to be under the control of not more than five persons by reason that any five or fewer persons would, if the company were wound up, be entitled as loan creditors to receive more than one-half of the assets therein referred to (whether or not it would otherwise be deemed to be under such control)—

(a) the definition of the expression "member" shall, for the purposes of the said section twenty-one and any provisions of this or any other Act relating thereto, be extended so as to include any loan creditor of the company; and

(b) for the purpose of paragraph 8 of the First Schedule to the Finance Act, 1922, a loan creditor shall be deemed to have an interest in any income of the company to be apportioned under that paragraph to the extent that that income, or assets representing it, has or have been expended or applied or is or are available to be expended or applied in redemption or repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor:

Provided that—

(i) where by virtue or in consequence of any settlement within the meaning of the next following section of this Act a loan creditor has been or could be required by some other person (hereafter referred to as a "beneficiary") to pay to the beneficiary the whole of any sums which have been or might be paid to that loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole of any sums or assets representing directly or indirectly any such sums as aforesaid, the beneficiary and not the loan creditor shall be deemed, for the purposes of the said section twenty-one of the Finance Act, 1922, and any provisions of this or any other Act relating thereto, to be a member of the company and, for the purposes of the said paragraph 8, to have the interest in the income of the company which the loan creditor would, but for this provision, be deemed to have by virtue of the foregoing provisions of this section; and

(ii) where a loan creditor has been or could be required as aforesaid to pay or transfer to the beneficiary a part only of any such sums or assets as aforesaid, the beneficiary, as well as the loan creditor, shall be deemed to be a member of the company for the purposes of the said section twenty-one of the Finance Act, 1922, and any provisions of this or any other Act relating thereto, and for the purpose of the said paragraph 8 the interest which the loan creditor is deemed to have in the income of the company by virtue of the foregoing provisions of this section shall be apportioned by the Special Commissioners between the beneficiary and the loan creditor.

(5) In relation to an investment company paragraph 11 of the First Schedule to the Finance Act, 1922, shall have effect as if references to shares included references to loan capital.

(6) Where, whether before or after the passing of this Act, an order has been made or a resolution passed for the winding-up of an investment company to which section twenty-one of the Finance Act, 1922, applies, the following provisions shall have effect:—

(a) the actual income of the company from all sources since the date of the order or resolution shall, for purposes of assessment to surtax, be deemed to be the income of the members;

(b) the Special Commissioners shall from time to time by notice in writing to the liquidator direct that the amount of that income for the year or period specified in the notice shall be deemed for those purposes to be the income of the members for that year or period, and the amount thereof shall be apportioned and surtax assessed and charged accordingly;

(c) the provisions of the said section twenty-one and any provisions of this or any other Act relating thereto shall, with any necessary modifications, apply in relation to any such directions, apportionments and assessments as they apply in relation to directions, apportionments and assessments under subsection (1) of the said section twenty-one.

(7) For the purpose of this section, the expression "loan creditor" means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon)

or in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on the business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

21. *Provisions as to income settled on children.*[3]—(1) Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) Subject as hereafter provided, for the purpose of this section—

(a) income which, by virtue or in consequence of a settlement to which this section applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and

(b) any income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.

(3) Where any income is dealt with as mentioned in the last foregoing subsection by virtue or in consequence of a settlement to which this section applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—

(a) the provisions of the last foregoing subsection shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which

[3] See Act of 1943, s. 20, and 6th Sched., Pt. II.

are allowable as deductions in computing his total income for the purpose of the Income Tax Acts; and

(b) any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the commencement of the year of assessment in which the sum is paid is an infant and unmarried, shall be deemed for the purposes of subsection (1) of this section to be paid as income, unless and except to the extent that the sum so paid together with any other sums previously so paid (whether to that child or to any other child who, at the commencement of the year of assessment in which that other sum was so paid, was an infant and unmarried) exceeds the aggregate amount of the income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (2) of this section, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

(4) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) of this section for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of the foregoing provisions of this section, does not exceed five pounds.

(5) Subsections (2) and (3) of section twenty of the Finance Act, 1922, shall have effect as if references to paragraph (c) of subsection (1) of that section included references to the foregoing provisions of this section, as if references to a disposition included references to a settlement, and as if the reference to the making of a disposition included a reference to the making of or entering into a settlement, and subsection (4) of that section shall have effect as if the reference to that section included a reference to the said provisions of this section.

(6) No repayment shall be made under section twenty-five of the Income Tax Act, 1918, on account of tax paid in respect of any income which by virtue of this section has been treated as the income of a settlor.

(7) The General or Special Commissioners may by notice in writing require any party to a settlement to furnish them within such time as they may direct (not being less than twenty-eight days), with such particulars as they think necessary for the purpose of this section, and if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(8) For the purposes of this section, a settlement shall not be deemed to be irrevocable, if the terms thereof provide—

(a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement; or

(b) for the determination of the settlement by the act or on the default of any person; or

(c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement:

Provided that a settlement shall not be deemed to be revocable by reason only—

(i) that it contains a provision whereunder any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of any such child as is mentioned in paragraph (a) of this subsection or in the event of an assignment of or charge on that income or those assets being executed by such a child; or

(ii) that it provides for the determination of the settlement as aforesaid in such a manner that the determination will not, during the lifetime of any such child as aforesaid, benefit any person other than such a child, or the wife, husband, or issue of such a child; or

(iii) in the case of a settlement to which section thirty-three of the Trustee Act, 1925, applies, that it directs income to be held for the benefit of such a child as aforesaid on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive the income or part thereof.

(9) In this section—

(a) the expression "child" includes a stepchild, an adopted child and an illegitimate child;

(b) the expression "settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

(c) the expression "settlor," in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this definition) includes any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

(d) the expression "income," except in the third and fourth places where it occurs in subsection (1) of this section, includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom, but does not include income arising under a settlement in a year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom.

(10) This section applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before the twenty-second day of April, nineteen hundred and thirty-six, which immediately before that date was irrevocable.

(11) Paragraph (c) of subsection (1) of section twenty of the Finance Act, 1922, and any other provisions of that subsection relating to that paragraph, shall cease to have effect as respects any settlement to which this section applies.

22. *Exclusion of certain machinery from valuation for Schedule A, etc.*— (1) No account shall be taken of the value of non-rateable machinery in ascertaining the annual value—

(a) of any property in Great Britain according to the general rule of No. 1 of Schedule A; or

(b) of any property whatsoever for the purpose of Rule 5 of the rules applicable to Cases I and II of Schedule D, or for the purpose of section eighteen of the Finance Act, 1919.

(2) The profits arising to any person from the letting of any machinery the value of which is not taken into account for the purpose of assessment to income tax under Schedule A shall be deemed to be profits chargeable to income tax under Case VI of Schedule D.

(3) In this section—

(a) the expression "property" means lands, tenements, hereditaments and heritages;

(b) the expression "machinery" includes plant, machines, tools, and appliances;

(c) the expression "non-rateable machinery," in relation to any property, means machinery of any description the value whereof is not taken into account for the purposes of rating under the relevant rating enactment, or would not be so taken into account if that enactment had effect with respect to the valuation of the property;

(d) the expression "relevant rating enactment" means—

(i) in relation to property in England or outside the United Kingdom, paragraph (b) of subsection (1) of section twenty-four of the Rating and Valuation Act, 1925;

(ii) in relation to property in Scotland, section one of the Lands Valuation (Scotland) Amendment Act, 1902;

(iii) in relation to property in Northern Ireland, section seven of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860.

23. *Amendments as to assessment for purposes of Schedules A and B in Northern Ireland.*—(1) Where under section eight of an Act of the Parliament of Northern Ireland known as the Valuation Acts Amendment Act (Northern Ireland), 1932 (hereafter in this section referred to as "the Act of 1932"), contiguous hereditaments in the occupation of one and the same occupier are valued as one rateable hereditament although held under two or more immediate lessors under different contracts of tenancy, the annual value of that rateable hereditament ascertained in accordance with the valuation shall be apportioned by the surveyor, after consultation with the Commissioner of Valuation, between the said contiguous hereditaments.

(2) Where tax is chargeable under Schedule B in respect of part, but not the whole, of a hereditament which, under the Act of 1932, is valued as one rateable hereditament, or to which an annual value has been apportioned under the last foregoing subsection, the annual value of the hereditament ascertained in accordance with the valuation or so apportioned thereto shall be apportioned or reapportioned, as the case may be, by the surveyor, after consultation with the Commissioner of Valuation, between the part of the hereditament in respect of which tax is so chargeable and the remainder thereof.

(3) If any difference arises as regards any apportionment or reapportionment made by the surveyor under this section, it shall be referred to the Special Commissioners, who may revise the apportionment or reapportionment as they think fit, and their determination thereon shall be final.

(4) Where an annual value is apportioned or reapportioned between hereditaments or parts of hereditaments under the foregoing provisions of this section, then, for the purpose of section one hundred and eighty-seven of the Income Tax Act, 1918, each of those hereditaments or parts, as the case may be, shall be deemed to be a separate hereditament, and the annual value

apportioned to it shall be deemed to have been ascertained according to the survey and valuation in force for the purposes of poor rates.

(5) Where a person receives rent in respect of any hereditament which, by virtue of section two of the Valuation (Ireland) Act, 1854, is for the time being exempt from assessment for poor rates, tax under Schedule A shall be assessed and charged on him upon the full amount of the rent, less any sum liable to be paid or allowed by way of deduction from the rent under subsection (2) of section seven of the Act of 1932.

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PART IV—MISCELLANEOUS AND GENERAL

. . . . . .

35.—(1) This Act may be cited as the Finance Act, 1936.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

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SECOND SCHEDULE.

SUPPLEMENTARY PROVISIONS AS TO PREVENTION OF AVOIDANCE OF INCOME TAX BY TRANSACTIONS RESULTING IN THE TRANSFER OF INCOME TO PERSONS ABROAD.

1. Tax at the standard rate shall not be charged by virtue of the principal section in respect of income which has borne tax at the standard rate by deduction or otherwise but, save as aforesaid, tax chargeable at the standard rate by virtue of that section shall be charged under Case VI of Schedule D and all assessments in respect thereof shall be made by the Special Commissioners.

2. In computing the liability to income tax of an individual chargeable by virtue of the provisions of the principal section, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of that section had actually been received by him.

3. Where an individual has been charged to income tax on any income deemed to be his by virtue of the principal section and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.

4. All the provisions of the Income Tax Acts relating to the charge, assessment, collection and recovery of income tax, to appeals against assessments made by the Special Commissioners and to cases to be stated for the opinion of the High Court shall apply to any income tax chargeable by virtue of the principal section, so far as they are applicable and subject to any necessary modifications.

5. For the purposes of an assessment under the principal section the Special Commissioners shall have any of the powers of a surveyor, and for the purpose of the representation of the Crown before the Special Commissioners on any appeal under this Schedule, any person nominated in that behalf by the Commissioners of Inland Revenue shall have all such powers as a surveyor has at and upon the determination of an appeal.

6. The Special Commissioners may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purpose of the principal section, and if that person, without reasonable excuse, fails to comply with the notice he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

7. Without prejudice to the provisions of the last foregoing paragraph, if any individual fails to furnish any particulars required under this Schedule, or if the Special Commissioners are not satisfied with any particulars furnished under this Schedule, they may make an estimate of the amount of the income which, by virtue of the provisions of the principal section, is to be deemed to be the income of the individual for the purposes of the Income Tax Acts.

THE TITHE ACT, 1936.

(26 GEO. 5 & 1 EDW. 8, c. 43)

[31st July, 1936]

. . . . . .

PART I

1. Subject to the provisions of this Act all tithe rentcharge shall be extinguished on the second day of October, nineteen hundred and thirty-six (in this Act referred to as "the appointed day"), and accordingly as from that day the land out of which any tithe rentcharge issued immediately before that day shall be absolutely discharged and freed therefrom.

. . . . . .

3.—(1) Subject to the provisions of this Act an annuity (to be called a "redemption annuity") shall be charged in respect of the land out of which a tithe rentcharge extinguished by this Act issued immediately before the appointed day, for the use of His Majesty, for the period commencing on the appointed day and ending on the day preceding the sixtieth anniversary thereof.

. . . . . .

10.—(1) Subject to the provisions of this Act the Commission shall, in every case in which they ascertain that an annuity is charged in respect of land in the ownership of two or more owners, apportion the annuity as between the several parts of the land that are in different ownership in such manner as appears to the Commission to be just and equitable:

. . . . . .

(2) When the Commission have apportioned an annuity they shall make an order specifying the amount apportioned to each part of the land, and, subject to the provisions of this Act, where such an order is made the existing annuity shall be deemed to have been extinguished as from the day following the last payment date before the date on which the order is made, and annuities (in this Act referred to as "substituted annuities") of the amounts apportioned to the several parts of the land shall be charged by virtue of this Act in respect of those parts respectively for the use of His Majesty for the

period commencing on the day following that payment date and ending on the day preceding the sixtieth anniversary of the appointed day.

. . . . . .

13.—(1) An annuity shall be payable half-yearly on each payment date

(2) The first instalment of an annuity charged by section three of this Act shall be payable on the first day of April, nineteen hundred and thirty-seven, and the first instalment of a substituted annuity shall be payable on the first payment date occurring after it is charged.

(3) The extinguishment or termination of an annuity shall not affect any right or liability in respect of sums which became due theretofore on account thereof.

(4) An annuity shall be deemed to be a periodical payment in the nature of income within the meaning of the Apportionment Act, 1870.

(5) No deduction in respect of income tax shall be made from any instalment of an annuity.

(6) For all the purposes of the Income Tax Acts, five-sixths and no more of each instalment of an annuity shall be deemed to be a payment by way of interest and the amount deemed to be so payable in any year of assessment shall be allowed as a deduction in respect of that year from the annual value, as assessed under Schedule A, of the lands in respect of which the annuity is charged:

Provided that, if by reason of a remission under this Act or for any other cause an instalment is not paid, no such deduction shall be allowed in respect thereof and, if part of an instalment is not paid, the amount of the deduction to be allowed shall be reduced in the proportion which the amount not paid bears to the amount of the instalment.

(7) Where an annuity is charged in respect of land in the ownership of two or more owners, any one of those owners who makes pursuant to this Act a payment in respect of an instalment of the annuity, or in respect of an amount payable in respect of the compulsory redemption of the annuity, shall be entitled to recover from the other, or from each of the others, of them as a simple contract debt such proportion of the payment as may be agreed between the owners or, in default of agreement, may be fixed by the appropriate authority.

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Part III—Miscellaneous and General

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46.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

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"annuity" means a redemption annuity charged by section three of this Act or a substituted annuity, and "substituted annuity" has the meaning assigned to it by section ten of this Act;

. . . . . .

"interest date" and "payment date" mean the first day of April and the first day of October;

. . . . . .

"tithe rentcharge" means tithe rentcharge issuing out of lands and payable in pursuance of the Tithe Acts, and includes a rentcharge into which a corn rent was converted under those Acts, and also

(except in such portions of this Act as do not have effect in relation to extraordinary tithe rentcharge) extraordinary tithe rentcharge, but does not include a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common.

. . . . . .

THE FINANCE ACT, 1937
(1 EDW. 8 & 1 GEO. 6, c. 54)

[30th July, 1937]

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PART II—INCOME TAX

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12. *Prevention of avoidance of tax by certain transactions in securities.*—(1) Where the owner of any securities (in this and the next following subsection referred to as "the owner") agrees to sell or transfer those securities, and by the same or any collateral agreement—

(a) agrees to buy back or re-acquire the securities; or

(b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities;

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—

(i) the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Income Tax Acts to be the income of the owner and not to be the income of any other person; and

(ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of the interest which is deemed to be his income as aforesaid, unless he shows that it has borne tax at the standard rate.

(2) The references in the last foregoing subsection to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities; or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities;

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken

of the transaction in computing for any of the purposes of the Income Tax Acts the profits arising from or loss sustained in the trade.

(4) The last foregoing subsection shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) This section shall not apply to any transaction where the relevant agreements were made before the sixth day of April, nineteen hundred and thirty-seven.

(6) For the purpose of this section—

(a) the expression "interest" includes a dividend;

(b) the expression "securities" includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(7) The Commissioners of Inland Revenue may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities, and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding fifty pounds and after judgment has been given for that penalty to a further penalty of the like amount during every day on which the failure continues.

13. *Amendment as to relief in respect of losses.*—For the purposes of section thirty-four of the Income Tax Act, 1918 (which relates to relief in respect of certain losses), the amount of a loss sustained in a trade shall, in all cases, be computed in like manner as the profits or gains arising or accruing from the trade are computed under the Rules applicable to Case I of Schedule D:

Provided that—

(a) nothing in this section shall affect the provisions of paragraph (2) of Rule 15 of the Rules applicable to Cases I and II of Schedule D (which relates to losses of assurance companies carrying on life assurance business); and

(b) where relief is claimed by virtue of this section in respect of a loss sustained in a trade which consists wholly or partly in dealing in securities, section twelve of this Act shall apply, for the purpose of computing the amount of the loss, as if subsection (5) thereof were omitted therefrom.

14. *Amendments of 12 & 13 Geo. 5, c. 17, s. 21.*—(1) Notwithstanding anything in subsection (5) of section twenty-one of the Finance Act, 1922, a company which is deemed for the purposes of that subsection to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in paragraph (a), (b) or (c) of subsection (1) of section nineteen of the Finance Act, 1936, or in subsection (3) of section twenty of that Act, a company to which the provisions of the said section twenty-one do not apply and which is not the nominee of any other person.

(2) In the case of a company to which section twenty-one of the Finance Act, 1922, applies, being an investment company, the following provisions shall have effect:—

(a) the Special Commissioners may, if they think fit, give a direction under subsection (1) of that section if it appears to them that the company has not within any year of assessment distributed to its members, in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of surtax, a reasonable part of its actual income from all sources for that year;

(b) in determining for the purpose of this subsection whether the company has or has not distributed as aforesaid a reasonable part of its actual income from all sources for any year of assessment, the Special Commissioners shall deem all the said income to have become available for distribution as soon as it became due and payable to the company;

(c) where an order has been made or a resolution passed for the winding up of the company, the Special Commissioners may, if they think fit, treat either of the following periods, that is to say,—

(i) the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution; or

(ii) the period from the end of the last year of assessment to the date of the order or resolution;

as if it were a year of assessment for the purposes of this subsection;

(d) for the purposes of this subsection, the provisions of section twenty-one of the Finance Act, 1922, and any other enactment relating thereto shall apply as if a year of assessment, or a period which by virtue of this subsection is treated as a year of assessment, were a year or period for which accounts of the company have been made up, but subject to the modifications set out in the Third Schedule to this Act.

(3) Where a direction is given under subsection (1) of section twenty-one of the Finance Act, 1922, with respect to an investment company, the Special Commissioners, in determining the respective interests of the members for the purpose of apportioning income in accordance therewith under paragraph 8 of the First Schedule to that Act, may, if it seems proper to them so to do, attribute to each member an interest corresponding to his interest in the assets of the company available for distribution among the members in the event of a winding up.

(4) In this section and in any other provisions of this or any other Act relating to section twenty-one of the Finance Act, 1922, the expression "investment company" shall have the same meaning as in section twenty of the Finance Act, 1936, and any references to the date of the order or resolution for the winding up of a company shall be construed—

(a) in the case of a company within the meaning of the Companies Act, 1929, or the Companies Act (Northern Ireland), 1932, as references to the time of the commencement of the winding up; and

(b) in the case of any other body corporate, as references to the time of the making of the order, or of the passing of the resolution, or of the signing of the instrument, or of the making of the application, or

of the doing of the act, as the case may be, which initiates the winding up of the body corporate. . . .

15. *Allowance for depreciation of mills, factories, etc.*[4]—(1) In computing for any year of assessment the amount of profits or gains arising or accruing from any trade the profits of which are chargeable to tax under Case I of Schedule D, there shall be allowed a deduction of an amount hereafter provided in respect of the depreciation of any premises being mills, factories or other similar premises, wherever situate, which, during the period of computation, are owned by the person carrying on the trade and occupied by him for the purposes thereof.

(2) Where the premises—

(a) are assessable to tax under No. I of Schedule A; and

(b) do not consist of or comprise electricity works or brickworks;

the amount of the deduction to be allowed under this section shall be an amount equal to the repairs allowance of the premises, or an amount equal to the appropriate fraction of the rating value of the premises, whichever is the less; and for the purposes of this subsection the appropriate fraction of the rating value shall be taken to be, in the case of premises situate in the administrative county of London or in Scotland, one-sixth, and, in the case of other premises, one-fifth, of the rating value.

(3) Where the premises—

(a) are not assessable to tax under No. I of Schedule A; or

(b) consist of or comprise electricity works or brickworks;

the amount of the deduction to be allowed under this section shall be an amount equal to one per cent. of the actual cost to the person carrying on the trade of any building (including the site thereof) which forms part of the premises, being either—

(i) a building which contains, and is used wholly or mainly for the purpose of operating, machinery worked by steam, electricity, water or other mechanical power; or

(ii) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as is mentioned in paragraph (i) of this subsection.

Provided that no non-rateable machinery within the meaning of section twenty-two of the Finance Act, 1936, shall be deemed to form part of a building for the purpose of this subsection.

(4) Where the period of computation is less than twelve months, or the premises are not owned by the person carrying on the trade and occupied by him for the purposes thereof for the whole of the period of computation, the deduction to be allowed under the foregoing provisions of this section shall be proportionately reduced; and where in the course of the period of computation there has been any alteration of the premises, or of the repairs allowance or rating value thereof, the amount of the deduction to be allowed under this section shall be the aggregate of the amounts of the deductions which would have been allowable thereunder if each part of the period of computation, before and after the alteration, had itself been a period of computation.

(5) A person occupying any premises as the tenant thereof shall be treated for the purposes of this section as if he were the owner thereof if, under the covenants to repair contained in the lease or agreement by virtue of which

[4] See Income Tax Act, 1945, s. 7.

he occupies the premises, the whole of the burden of any depreciation of the premises falls upon him.

(6) For the purpose of this section—

(a) the expression "electricity works" means any building in which electrical energy is generated, converted or transformed for supply by way of trade;

(b) the expression "period of computation," in relation to any trade, means the period by reference to the profits or gains of which the profits or gains arising or accruing from the trade are to be computed for the year of assessment in question;

(c) the expression "rating value" in relation to any premises, means—

(i) in the case of premises situate in England outside the administrative county of London, the net annual value of the premises as appearing in the valuation list for the time being in force under the Rating and Valuation Act, 1925;

(ii) in the case of premises situate in the administrative county of London, the gross value of the premises as appearing in the valuation list for the time being in force under the Valuation (Metropolis) Act, 1869;

(iii) in the case of premises situate in Scotland, the gross annual value of the premises as appearing in the valuation roll for the time being in force under the Rating (Scotland) Act, 1926;

(iv) in the case of premises situate in Northern Ireland, the net annual value of the premises as shown in the valuation lists for the time being in force under the Valuation Acts (Northern Ireland), 1852 to 1932, or in any provisional or revised valuation for the time being in force by virtue of any enactment pending the annual revision of valuation under the said Acts;

(d) the expression "repairs allowance," in relation to any premises, means the reduction authorised in respect of the premises for the purposes of Rule 7 of No. V of Schedule A.

(7) The proviso to paragraph (2) of Rule 5 of the rules applicable to Cases I and II of Schedule D, and section eighteen of the Finance Act, 1919, shall cease to have effect.

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17. *Earned income of wives.*—For the purposes of subsection (2) of section eighteen of the Finance Act, 1920 (which provides for an increased personal allowance to a claimant whose total income includes earned income of his wife), any earned income of the claimant's wife arising in respect of any pension, superannuation or other allowance, deferred pay, or compensation for loss of office, given in respect of his past services in any office or employment of profit, shall be deemed not to be earned income of his wife.

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PART III—NATIONAL DEFENCE CONTRIBUTION

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25. *Deduction of national defence contribution in computing liability to income tax.*—(1) The amount of the national defence contribution payable in respect of the profits arising from a trade or business in any chargeable accounting period shall be allowed to be deducted as an expense in computing for the purpose of income tax the profits and gains arising from that trade or business in that period.

(2) Where an amount is allowed to be deducted as an expense by virtue of this section, any income tax overpaid in consequence thereof by any person shall be repaid to him.

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PART V—MISCELLANEOUS AND GENERAL

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34. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1937.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

THIRD SCHEDULE
(Section 14)

MODIFICATION OF ENACTMENTS RELATING TO SURTAX ON UNDISTRIBUTED INCOME OF CERTAIN COMPANIES

1. Where by virtue of this Act a direction is given under subsection (1) of section twenty-one of the Finance Act, 1922, that the actual income of an investment company from all sources for a year of assessment shall be deemed to be the income of the members—

(a) the amount to be deducted in assessing and charging surtax under the provisions of the said section in respect of the sum apportioned to any member in consequence of the direction shall be any amount which has been distributed to him by the company in that year of assessment out of the income of the company for that year in such manner that the amount distributed falls to be included in the statement of total income to be made by him for the purposes of surtax;

(b) paragraph 9 of the First Schedule to the Finance Act, 1922, shall not apply, but the income apportioned to a member of the company, so far as assessable and chargeable to surtax under section twenty-one of the said Act, shall, for the purposes of that tax, be deemed to have been received by him on the last day of that year of assessment;

(c) subsection (1) of section thirty-two of the Finance Act, 1927, shall apply, in a case where the second company referred to therein is an investment company, as if the amount to be deemed to be the income of the members of that company and to be apportioned among them under that subsection were the excess of the amount apportioned to that company in consequence of the direction over the amount, if any, which has been received in that year of assessment by that company out of the income of the first company for that year in such manner as would, in the case of an individual, render the amount so received liable to be included in the statement of his income for the purposes of surtax.

2. Subsection (3) of section eighteen of the Finance Act, 1928, shall have effect as if there were inserted—

(a) in paragraph (a) thereof after the words "year or other period," where they first occur, the words "or any year of assessment ending within that year or other period," and where they secondly occur, the words "or any such year of assessment";

(b) in paragraph (b) thereof after the words "year or period" the words "or any year of assessment ending within that year or period."

3. In this Schedule any reference to a year of assessment shall include a reference to a period which is treated by the Special Commissioners by virtue of this Act as if it were a year of assessment.

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THE FINANCE ACT, 1938
(1 & 2 GEO. 6, c. 46)

[29th July, 1938

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PART II—INCOME TAX (CHARGE OF TAX AND MISCELLANEOUS)

Charge of tax, relief, etc.

14. *Income tax for 1938—39.*—(1) Income tax for the year 1938—39 shall be charged at the standard rate of five shillings and sixpence in the pound, and, in the case of an individual whose total income exceeds two thousand pounds, at such higher rates in respect of the excess over two thousand pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1937—38 shall have effect with respect to the income tax charged for the year 1938—39.

15. *Higher rates of income tax for 1937—38.*—Income tax for the year 1937—38 in respect of the excess of the total income of an individual over two thousand pounds shall be charged at rates in the pound which respectively exceed the standard rate by amounts equal to the amounts by which the rates at which income tax was charged in respect of the said excess for the year 1936—37 respectively exceeded the standard rate for that year.

16. *Payment of Schedule A tax by instalments in certain cases.*—(1) Where—

(a) the tenant occupier of any land is authorised, under the provisions of Rule 1 of No. VIII of Schedule A, to make a deduction from the rent payable in respect of the land on account of the tax chargeable under that Schedule for any year of assessment; and

(b) the amount of the said deduction would exceed the next payment of rent from which it is authorised to be made;

he may, on giving notice to the collector in such form and within such time and containing such particulars as the Commissioners of Inland Revenue may require, pay the said tax for that year by two instalments as follows, that is to say—

(i) on or before the date or the last date on which the tax would, but

for this section, be due and payable, the whole amount of the tax less the said excess;

(ii) on or before the expiration of three months from that date, the remainder of the tax.

(2) The provisions of the Income Tax Acts as to recovery of tax shall apply to each such instalment of tax in like manner as they apply to the whole amount of the tax.

(3) In this section the expression "land" means lands, tenements, hereditaments and heritages.

17. *Relief of air-raid protection works from tax under Schedule A.*—(1) In estimating for the purposes of income tax under Schedule A the annual value of any building, no regard shall be had—

(a) to any room or other part of the building which has been added at any time after the building was first assessed to tax, or was included in the building before it was so assessed, solely for the purpose of affording protection in the event of hostile attack from the air, and is not occupied or used for any other purpose; or

(b) to any structural alterations or improvements of the building (not being the addition of any such room or other part as aforesaid) made, at any time after the building was first assessed to tax, solely for the purpose of affording such protection:

Provided that this subsection shall not apply if the building or any part thereof is let and the rent or any other consideration for the lease is greater than it would have been if the room or other part referred to in paragraph (a) had not been added or included, or the structural alterations or improvements referred to in paragraph (b) had not been made, as the case may be.

(2) If, in any year of assessment for which the annual value of any building has been estimated in accordance with paragraph (a) of the last foregoing subsection, any room or other part of the building to which no regard has been had by virtue of that paragraph is occupied or used for any purpose other than the purpose of affording such protection as aforesaid, an assessment or additional assessment shall be made so as to include in the annual value of the building the value of that room or other part.

(3) Exemption shall be granted from income tax under Schedule A in respect of any separate unit of assessment which is intended to be occupied and used solely for the purpose of affording such protection as aforesaid and is not occupied or used for any other purpose:

Provided that this subsection shall not apply to any unit of assessment the whole or part of which is let.

(4) In any case where—

(a) a deduction is to be allowed in respect of the depreciation of any premises, being mills, factories or other similar premises, under subsection (2) of section fifteen of the Finance Act, 1937 (which provides for a deduction in computing profits of an amount equal to the repairs allowance or the appropriate fraction of the rating value of the premises, whichever is the less); and

(b) the repairs allowance of the premises is less than it would have been if subsection (1) of this section had not been enacted;

there shall be computed the annual value of any room or other part, or any structural alterations or improvements, to which regard has not been had under the said subsection (1), and the amount of the deduction to be allowed as aforesaid shall be increased by the amount of the repairs allowance which would have been authorised in respect of the annual value as so computed if it had been separately assessed to tax under Schedule A.

20. *Deduction in respect of children over sixteen undergoing training.*— (1) Section twenty-one of the Finance Act, 1920 (which provides for a deduction in respect of children over the age of sixteen receiving full-time instruction at an educational establishment), shall have effect as if the references in subsections (1) and (2) thereof to a child receiving such instruction included references to a child undergoing training by any person (hereafter referred to as "the employer") for any trade, profession or vocation in such circumstances that—

(a) the child is required to devote the whole of his time to the training for a period of not less than two years; and

(b) while the child is undergoing the training, the emoluments, if any, receivable by the child, or payable by the employer in respect of of the child, do not exceed thirteen pounds a year, exclusive of any emoluments receivable or payable by way of return of any premium paid in respect of the training.

For the purpose of paragraph (b) of this subsection, where a premium has been paid in respect of the training of a child, all emoluments at any time receivable by the child, or payable by the employer in respect of the child, shall be deemed to be receivable or payable by way of return of the premium, unless and except to the extent that the amount thereof exceeds in the aggregate the amount of the premium.

(2) In this section the expression "emoluments" means any salary, fees, wages, perquisites, or profits or gains whatsoever, and includes the value of free board, lodging, or clothing.

(3) For the purpose of a claim in respect of a child undergoing training, the surveyor may require the employer to furnish particulars with respect to the training and the emoluments of the child in such form as may be prescribed by the Commissioners of Inland Revenue.

21. *Deduction in certain cases in respect of dependent relatives.*—If any person proves that during any year of assessment he has a relative living with him—

(a) who in that year has been denied wholly or in part unemployment allowance under Part II of the Unemployment Act, 1934, or public assistance, on the ground that the relative was being maintained wholly or partly by him; and

(b) in respect of whom he is entitled to no deduction for that year under section twenty-two of the Finance Act, 1920;

he shall be entitled to a deduction from the amount of tax with which he is chargeable for that year equal to tax at the standard rate on the amount deemed to have been paid by him in that year toward such maintenance, but not exceeding tax on *fifty*[1] pounds

Provisions as respects dividends, interest, etc.

22. *Amendments of Schedule C and consequential amendments of Schedule D.*— (1) Where a banker or any other person in the United Kingdom, by means of coupons received from any other person or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom, the tax under Schedule C shall extend to the dividends, and the banker or other person so obtaining payment thereof shall be treated for the purpose of the paying agents rules as if he were intrusted with the payment thereof.

(2) Where—

(a) any banker in the United Kingdom sells or otherwise realises coupons

[1] Substituted, Act of 1943 s. 16 (2).

for any dividends and pays over the proceeds to any person or carries them to his account; or

(b) any dealer in coupons in the United Kingdom purchases any such coupons as aforesaid otherwise than from a banker or another dealer in coupons;

the tax under Schedule C shall extend to the proceeds of the sale or other realisation, and the paying agents rules shall apply to those proceeds as if they were dividends to which those rules apply, and shall apply to the banker or dealer as if he had been intrusted with the payment thereof:

Provided that where tax in respect of the proceeds of the sale or realisation of any such coupon has been accounted for under the said rules by any banker or dealer and the Special Commissioners are satisfied that the coupon has been subsequently paid in such manner that tax has been deducted from the payment under any of the rules applicable to Schedule C, the tax so deducted shall be repaid.

(3) For all the purposes of Schedule C, of Rule 1 of the rules applicable to Case III of Schedule D, and of this section, the expression "public revenue" shall, except where the context otherwise requires, include the public revenue of any Government whatsoever, and the revenue of any public authority or institution in any country outside the United Kingdom.

(4) Paragraph (c) of Rule 2 of the general rules applicable to Schedule C (which exempts ministers of foreign States) shall apply to any sums chargeable with tax by virtue of subsection (2) of this section as it applies to interest, and paragraph (d) of that rule (which exempts non-residents) shall apply to any sums chargeable with tax by virtue of any of the foregoing provisions of this section as it applies to the interest or dividends on any securities of a foreign State or British possession which are payable in the United Kingdom.

(5) Subsections (1) and (2) of this section shall apply for the purposes of Rule 7 of the miscellaneous rules applicable to Schedule D (which relates to interest, etc. from colonial and foreign companies) as they apply for the purposes of Schedule C, subject to the following modifications—

(a) references to Schedule D shall be substituted for references to Schedule C;

(b) references to dividends shall be construed as references to any such payments as are referred to in sub-paragraphs (a) and (b) of paragraph (1) of the said Rule 7.

(6) In this section—

(a) the expression "banker" includes a person acting as a banker and, notwithstanding anything in the paying agents rules, includes the Bank of England and the Bank of Ireland;

(b) the expression "coupons" and "coupons for any dividends" include warrants for or bills of exchange purporting to be drawn or made in payment of any dividends;

(c) the expression "dividends" means any interest, annuities, dividends or shares of annuities payable elsewhere than in the United Kingdom (whether they are also payable in the United Kingdom or not) out of any public revenue other than the public revenue of the United Kingdom;

(d) the expression "paying agents rules" means the rules applicable to Schedule C as to interest, etc. with the payment of which persons other than the Bank of England, the Bank of Ireland and the National Debt Commissioners are intrusted.

(7) Rule 7 of the paying agents rules and paragraph (3) of Rule 7 of the miscellaneous rules applicable to Schedule D shall not have effect.

(8) Subject to the provisions of this subsection, the foregoing provisions of this section shall be deemed always to have had effect:

Provided that—

(a) nothing in this section shall affect—

(i) the determination of any commissioners or the judgment of any court made or given before the twenty-seventh day of April nineteen hundred and thirty-eight; or

(ii) any appeal from or case stated in respect of any such determination, or any appeal from any such judgment; or

(iii) any appeal against an assessment if notice of the appeal was given before that date; and

(b) nothing in this section shall apply to the proceeds of any sale or other realisation of coupons sold or realised at any time after the twenty-ninth day of July nineteen hundred and thirty-seven, and before the said twenty-seventh day of April, being coupons for any dividends or other payments payable at any time before the said twenty-seventh day of April in respect of which provision was not made for payment at the due date in accordance with the obligations undertaken by the debtor.

24. *Provisions as respects transfers of income arising from securities.*— (1) Where in any year of assessment the owner of any securities (in this section referred to as "the owner") sells or transfers the right to receive any interest payable (whether before or after the sale or transfer) in respect of the securities without selling or transferring the securities, then, for all the purposes of the Income Tax Acts, that interest, whether it would or would not be chargeable to tax apart from the provisions of this section—

(a) shall be deemed to be the income of the owner, or, in a case where the owner is not the beneficial owner of the securities and some other person (hereafter in this section referred to as "a beneficiary") is beneficially entitled to the income arising from the securities, the income of the beneficiary; and

(b) shall be deemed to be the income of the owner or beneficiary for that year; and

(c) shall not be deemed to be the income of any other person:

Provided that, in the case of a sale or other realisation the proceeds whereof are chargeable to tax under Schedule C or Rule 7 of the miscellaneous rules applicable to Schedule D, the interest so deemed to be the income of the owner or beneficiary shall be deemed to be equal in amount to the amount of those proceeds

(2) Nothing in the foregoing provisions of this section shall affect any provision of the Income Tax Acts authorising or requiring the deduction of tax from any interest which is deemed to be the income of the owner or beneficiary as aforesaid or from the proceeds of any subsequent sale or other realisation of the right to receive that interest:

Provided that the proceeds of any such subsequent sale or other realisation shall not, for any of the purposes of those Acts, be deemed to be the income of the seller or the person on whose behalf the right is otherwise realised.

(3) Where the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner or beneficiary shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of any interest which is deemed to be his income by virtue of this section, unless he shows that it has borne tax at the standard rate or that

the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or the said Rule 7:

Provided that, in any case where, if the interest had been chargeable under Case IV or Case V of Schedule D, the computation of tax would have been made by reference to the amount received in the United Kingdom, the tax under Case VI shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the securities.

(4) For the purposes of this section—

(a) the expression "interest" includes dividends, annuities and shares of annuities; and

(b) the expression "securities" includes stocks and shares.

(5) The Commissioners of Inland Revenue may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days) in respect of all securities of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether—

(a) tax has been borne in respect of the interest on all those securities; or

(b) the proceeds of any sale or other realisation of the right to receive the the interest on the securities have been charged to tax under Schedule C or the said Rule 7;

and if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(6) The provisions of this section shall be deemed always to have had effect:

Provided that—

(a) nothing in this section shall affect—

(i) the determination of any commissioners or the judgment of any court made or given before the twenty-seventh day of April, nineteen hundred and thirty-eight; or

(ii) any appeal from or case stated in respect of any such determination, or any appeal from any such judgment; or

(iii) any appeal against an assessment if notice of the appeal was given before that date; and

(b) nothing in this section shall apply to any sale or other realisation the proceeds whereof are not chargeable to tax by virtue of proviso (b) to subsection (8) of the last foregoing section.

25. *Charge of tax on funding bonds issued in respect of interest on certain debts.*—(1) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on any debt to which this section applies—

(a) the issue of the bonds shall be treated for all the purposes of the Income Tax Acts as if it were the payment of an amount of that interest equal to the value of the bonds at the time of the issue thereof; and

(b) the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.

(2) Where an issue of bonds is treated as aforesaid as if it were the payment of an amount of interest, and any person by or through whom the bonds are issued would be required, by virtue of any provision of the Income Tax

Acts, to deduct tax from that amount of interest if it had been actually paid by or through him, the following provisions shall have effect—

(a) subject to the provisions of the next following paragraph, any such person—

(i) shall retain bonds the value whereof at the time of their issue is equal to tax on the said amount of interest at the standard rate for the year of assessment in which the bonds are issued; and

(ii) shall be acquitted in respect of any such retention in like manner as if he had deducted such tax from the interest; and

(iii) shall be chargeable with the said tax accordingly, but may tender the bonds so retained in satisfaction of that tax;

(b) where the Commissioners of Inland Revenue are satisfied that it is impracticable to retain bonds on account of tax under the last foregoing paragraph—

(i) they may relieve any such person from the obligation to retain bonds and account for tax under that paragraph on his furnishing to them a statement of the names and addresses of the persons to whom the bonds have been issued and the amount of the bonds issued to each such person; and

(ii) tax in respect of the amount of interest treated by virtue of this section as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D for the year of assessment in which the bonds are issued on the persons receiving or entitled to the bonds.

(3) This section applies to any debt incurred, whether in respect of any money borrowed or otherwise, by any Government, public authority or public institution whatsoever, or by any body corporate whatsoever.

(4) For the purpose of this section the expression "funding bonds" includes any bonds, stocks, shares, securities or certificates of indebtedness.

(5) Subject to the provisions of this subsection the foregoing provisions of this section shall be deemed always to have had effect:

Provided that—

(a) nothing in this section shall affect—

(i) the determination of any commissioners or the judgment of any court made or given before the twenty-seventh day of April nineteen hundred and thirty-eight; or

(ii) any appeal from or case stated in respect of any such determination, or any appeal from any such judgment; or

(iii) any appeal against an assessment if notice of the appeal was given before that date; and

(b) nothing in this section shall apply to any funding bonds issued at any time after the twenty-ninth day of July nineteen hundred and thirty-seven and before the said twenty-seventh day of April.

Miscellaneous

28. *Valuation of trading stock on discontinuance of trades.*—(1) In computing for any purpose of the Income Tax Acts the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance thereof shall be valued as follows:—

(a) in the case of any such trading stock—

(i) which is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade in the United Kingdom; and

(ii) the cost whereof may be deducted by the purchaser as an expense in computing for any such purpose the profits or gains of that trade;

the value thereof shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer;

(b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

(2) Any question arising under paragraph (a) of the last foregoing subsection shall be determined as follows, for the purpose of computing as aforesaid the profits or gains of both the trades concerned:—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to both the trades concerned, any such question shall be determined by those Commissioners, unless all parties concerned agree that it shall be determined by the Special Commissioners;

(b) in any other case, any such question shall be determined by the Special Commissioners;

(c) any such Commissioners shall determine the question in like manner as if it were an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal shall apply accordingly with any necessary modifications.

(3) Where, by virtue of any provision of Rule 11 of the rules applicable to Cases I and II of Schedule D, a trade is treated as having been discontinued for the purpose of computing tax, it shall also be so treated for the purpose of this section, but this section shall not apply in a case where a trade carried on by a single individual is discontinued by reason of his death.

(4) For the purposes of this section the expression "trading stock," in relation to any trade, means property of any description, whether real or personal, being either—

(a) property such as is sold in the ordinary course of the trade or would be so sold as if it were mature or if its manufacture, preparation or construction were complete; or

(b) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in the last foregoing paragraph.

27. *Losses of capital redemption business.*[1] (1) Where any person carries on capital redemption business in conjunction with business of any other class, the capital redemption business shall, for the purposes of the Income Tax Acts, be treated as a separate business from any other class of business carried on by that person.

(2) In ascertaining whether and to what extent any person has sustained a loss in the carrying on by him of capital redemption business, for the purpose either—

(a) of setting off the loss under Rule 13 of the rules applicable to Cases I and II of Schedule D against the profits of any other business carried on by him; or

(b) of giving relief in respect of the loss under section thirty-four of the Income Tax Act, 1918;

any income of that person derived from investments held in connection with the capital redemption business shall be treated as part of the profits arising to him from that business.

[1] See No. 2 Act of 1945, s. 22 (2), proviso, p. 791.

(3) In this section the expression "capital redemption business" means the business (not being life assurance business or industrial assurance business) of effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future.

(4) This section shall not apply to any capital redemption business, in so far as it consists of carrying out such contracts as aforesaid effected before the first day of January, nineteen hundred and thirty-eight.

28. *Amendments as respects avoidance of tax by transfer of income to persons abroad.*—(1) Section eighteen of the Finance Act, 1936 (which contains provisions for the purpose of preventing the avoiding by individuals of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom), shall be amended in accordance with the following provisions of this section . . .[2]

(5) The foregoing amendments of the said section eighteen shall take effect for the purpose of assessment to income tax for the year 1937—38 and subsequent years and shall apply in relation to transfers of assets and associated operations whether carried out before or after the commencement of that year:

Provided that as respects income tax at the standard rate for the year 1937—38, the said section eighteen shall have effect as originally enacted, but surtax for that year shall be assessed and charged as if any income which would, but for this proviso, have been charged under the said section eighteen as amended by this section had in fact been so charged.

PART III—INCOME TAX (ADMINISTRATION OF ESTATES)

30. *Provisions as to limited interest in residue.*—(1) The following provisions of this section shall have effect in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of his estate (in this Part of this Act referred to as "the administration period") or during a part of that period, has a limited interest in the residue of the estate or in a part thereof

(2) When any sum has been paid during the administration period in respect of that limited interest the amount thereof shall, subject to the provisions of the next following subsection, be deemed for all the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which that sum was paid, or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which it was subsisting.

(3) On the completion of the administration of the estate—

(a) the aggregate amount of all sums paid before, or payable on, the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part thereof during which he had that interest, as the case may be, and to have been paid to him as it accrued due;

(b) the amount deemed to have been paid to that person by virtue of the foregoing paragraph in any year of assessment shall be deemed

[2] See s. 18 of the Act of 1936 as printed above.

for all the purposes of the Income Tax Acts to have been paid to him as income for that year; and

(c) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of the last foregoing subsection, such adjustments shall be made as are hereafter provided in this part of this Act.

(4) Any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall—

(a) in the case of a United Kingdom estate, be deemed to be income of such an amount as would after deduction of standard tax for that year be equal to the amount deemed to have been so paid, and to be income that has borne standard tax;

(b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.

(5) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts to the satisfaction of the General or Special Commissioners, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax, less the tax so borne, bears to the amount of the said aggregate income, less the tax so borne:

Provided that where relief has been so given, such part of the amount in respect of which he has been charged to standard tax as corresponds to the said proportion shall, for the purposes of surtax, be deemed to represent income of such an amount as would after deduction of standard tax be equal to that part of the amount charged.

31. *Provisions as to absolute interests in residue.*—(1) The following provisions of this section shall have effect in relation to a person who, during the administration period or during a part of that period, has an absolute interest in the residue of the estate of a deceased person or in a part thereof.

(2) There shall be ascertained in accordance with the next succeeding section the amount of the residuary income of the estate for each whole year of assessment, and for each broken part of a year of assessment, during which—

(a) the administration period was current; and

(b) that person had that interest;

and the amount so ascertained in respect of any year or part of a year, or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Part of this Act referred to as the "residuary income" of that person for that year of assessment.

Provided that when the legacy duty charged on the residue, or on the part thereof in which that person has an absolute interest, as the case may be, has been paid in respect of income for any such year or part of a year as aforesaid, his residuary income for that year shall thereafter be treated for the purposes of surtax as reduced by the amount of that duty so far as paid in respect of such income.

(3) When any sum or sums has or have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to the provisions of the next following subsection, be deemed for all the purposes of the Income Tax Acts to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, he would have been treated for those purposes as having received income if he had had a right to receive in each year of assessment—

(a) in the case of a United Kingdom estate, his residuary income for that year less standard tax for that year, or

(b) in the case of a foreign estate, his residuary income for that year,

and that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

In the case of a United Kingdom estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this subsection shall be deemed to be income of such an amount as would after deduction of standard tax for that year be equal to the amount deemed to have been so paid, and to be income that has borne standard tax.

(4) On the completion of the administration of the estate—

(a) the amount of the residuary income of that person for any year of assessment shall be deemed for all the purposes of the Income Tax Acts to have been paid to him as income for that year, and in the case of a United Kingdom estate shall be deemed to have borne tax by reference to the standard rate; and

(b) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of the last foregoing subsection, such adjustments shall be made as are hereafter provided in this Part of this Act.

(5) In the case of a foreign estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.

(6) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts to the satisfaction of the General or Special Commissioners, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax bears to the amount of the said aggregate income.

22. *Supplementary provisions as to absolute interests in residue.*—(1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—

(a) the amount of any annual interest, annuity, or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred

by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate; and

(b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.

(2) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, his residuary income for each year shall be reduced for the purpose of the last foregoing section by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of his residuary income.

In this subsection the expression "benefits received" in respect of an absolute interest means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest, that is to say—

(a) as regards a sum paid before the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of standard tax for the year of assessment in which that sum was paid, be equal to that sum, or in the case of a foreign estate the amount of that sum; and

(b) as regards a sum payable on the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of standard tax for the year of assessment in which the administration is completed, be equal to that sum, or in the case of a foreign estate the amount of that sum.

(3) In the application of the last foregoing subsection to a residue or a part of a residue in which a person other than the person having an absolute interest at the completion of the administration had an absolute interest at any time during the administration period, the aggregates therein mentioned shall be computed in relation to those interests taken together, and the residuary income of that other person also shall be subject to reduction thereunder.

22. *Special provisions as to certain interests in residue.*—(1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute or limited interest in the residue of that estate or in a part thereof, they shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Part of this Act shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.

(2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part thereof, sums paid during that period in respect of the residue or of that part thereof, as the case may be, shall be treated for the purpose of

this Part of this Act as having been paid in respect of the interest of the person who first had an absolute interest therein up to the amount of—

(a) in the case of a United Kingdom estate, the aggregate for all years of that person's residuary income less standard tax, or

(b) in the case of a foreign estate, the aggregate for all years of that person's residuary income,

and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest therein, and so on.

(3) Where upon the exercise of a discretion any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part thereof) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person, the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for all the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which it was paid, and the provisions of subsections (4) and (5) of section thirty of this Act shall have effect in relation to an amount which is deemed to have been paid as income by virtue of this subsection.

34. *Provisions as to adjustments and furnishing of information.*—(1) Where, on the completion of the administration of an estate, any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment and—

(a) that amount is greater than the amount that has previously been deemed to have been paid to him as income for that year by virtue of this Part of this Act; or

(b) no amount has previously been so deemed to have been paid to him as income for that year;

an assessment or additional assessment may be made upon him for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which he may be entitled shall be allowed accordingly.

(2) Where, on the completion of the administration of an estate, any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment, and that amount is less than the amount that has previously been so deemed to have been paid to him, then—

(a) if an assessment has already been made upon him for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Part of this Act which take effect on the completion of the administration, and any tax overpaid shall be repaid;

(b) if—

(i) any relief has been allowed to him by reference to the amount which has been previously deemed as aforesaid to have been paid to him as income for that year; and

(ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to him as income for that year;

the relief so given in excess may, if not otherwise made good, be charged under Case VI of Schedule D and recovered from that person accordingly.

(3) Notwithstanding anything contained in the Income Tax Acts, the time within which an assessment or additional assessment may be made for the purposes of this Part of this Act, or an assessment may be adjusted for those purposes, or a claim for relief may be made by virtue of this Part of this Act, shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.

(4) The General or Special Commissioners may by notice in writing require any person being or having been a personal representative of a deceased person, or having or having had an absolute or limited interest in the residue of the estate of a deceased person or in a part thereof, to furnish them (within such time as they may direct, not being less than twenty-eight days) with such particulars as they think necessary for the purposes of this Part of this Act, and if that person without reasonable excuse fails to comply with the notice he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for each day during which that failure continues.

35. *Interpretation of Part III.*—(1) The following provisions of this section shall have effect for the purpose of the interpretation of the foregoing provisions of this Part of this Act.

(2) A person shall be deemed to have an "absolute interest" in the residue of the estate of a deceased person, or in a part thereof, if and so long as the capital of the residue or of that part thereof, as the case may be, would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person.

(3) A person shall be deemed to have a "limited interest" in the residue of the estate of a deceased person, or in a part thereof, during any period, being a period during which he has not an absolute interest in the residue or in that part thereof, as the case may be, where the income of the residue or of that part thereof, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to him, or to another in his right, for his benefit, whether directly or indirectly as aforesaid.

(4) The expression "personal representatives" means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England by section fifty-five of the Administration of Estates Act, 1925, and persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under the law of England of personal representatives as so defined, and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.

(5) The expression "specific disposition" means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section forty-six of the Administration of Estates Act, 1925, and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England.

Real estate included (either by a special or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

(6) The expression "charges on residue" means, in relation to the estate

of a deceased person, the following liabilities properly payable thereout and interest payable in respect of those liabilities, that is to say,—

(a) funeral, testamentary and administration expenses and debts;

(b) general legacies (including in the case of an intestacy the sum of one thousand pounds charged by virtue of section forty-six of the Administration of Estates Act, 1925), demonstrative legacies and annuities; and

(c) any other liabilities of his personal representatives as such;

but, in the case of any such liabilities which, as between persons interested under a specific disposition or in such a legacy as aforesaid or in an annuity and persons interested in the residue of the estate, fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the legacy or annuity, includes only such part (if any) of those liabilities as falls ultimately upon the residue.

(7) References to the "aggregate income of the estate" of a deceased person for any year of assessment shall be construed as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(a) any such income which is chargeable to United Kingdom income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year, and

(b) any such income which would have been so chargeable if it had arisen in the United Kingdom to a person resident and ordinarily resident therein, such income being computed at the full amount thereof actually arising during that year, less such deductions as would have been allowable if it had been charged to United Kingdom income tax,

but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased.

(8) The expressions "United Kingdom estate" and "foreign estate" mean respectively, as regards any year of assessment—

(a) an estate the income whereof comprises only income which either has borne United Kingdom income tax by deduction or in respect of which the personal representatives are directly assessable to United Kingdom income tax, not being an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from United Kingdom income tax by reference to the fact that they are not resident, or not ordinarily resident, in the United Kingdom; and

(b) an estate other than a United Kingdom estate.

(9) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part of this Act shall have effect in relation to each of those parts, with the substitution for references to the estate of references to that part of the estate and for references to the personal representatives of the deceased as such of references to his personal representatives in their capacity as having the functions referred to in subsection (4) of this section in relation to that part of the estate.

(10) References to sums paid or payable in respect of an absolute or limited interest in the residue of the estate of a deceased person, or in a part thereof, shall, in the application of this Part of this Act for the purposes of surtax, be construed as excluding any sum paid or payable in discharge of any legacy duty charged in respect of that absolute or limited interest.

(11) The expression "standard tax" means United Kingdom income tax at the standard rate.

(12) References to sums paid include references to assets that are transferred or that are appropriated by a personal representative to himself, and to debts that are set off or released; references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself is subsisting on the completion of the administration and to debts as to which an obligation to release or set off, or a right of a personal representative so to do in his own favour, is then subsisting; and references to amount shall be construed, in relation to such assets, as references to the value thereof at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts, as references to the amount thereof.

36. *Application of Part III to Scotland and Northern Ireland.*—(1) For the purpose of the application of this Part of this Act to Scotland—

(i) any reference to the completion of the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including, without prejudice to the foresaid generality, debts, legacies immediately payable, and legal rights of surviving spouse or children) the free balance held in trust for behoof of the residuary legatees has been ascertained;

(ii) for paragraph (b) of subsection (1) of section thirty-two of this Act, the following paragraph shall be substituted—

"(b) the amount of any of the aggregate income of the estate for that year to which a person has become entitled by virtue of a specific disposition";

(iii) the expression "real estate" means heritable estate;

(iv) for any reference to the sum of one thousand pounds charged by virtue of section forty-six of the Administration of Estates Act, 1925, there shall be substituted a reference to the sum of five hundred pounds to which a widow is entitled by virtue of the Intestate Husband's Estate (Scotland) Act, 1911;

(v) the expression "charges on residue" shall include in addition to the liabilities specified in subsection (6) of the last foregoing section any sums required to meet claims in respect of legal rights by surviving spouse or children.

(2) For the purpose of the application of this Part of this Act to Northern Ireland, for any reference to the sum of one thousand pounds charged by virtue of section forty-six of the Administration of Estates Act, 1925, there shall be substituted a reference to the sum of five hundred pounds to which a widow is entitled by virtue of section two of the Intestates' Estates Act, 1890.

37. *Commencement of Part III.*—(1) This Part of this Act shall have effect, in relation to amounts deemed by virtue thereof to have been paid as income—

(a) in the case of amounts so deemed by virtue of section thirty of this Act, or by virtue of subsection (3) of section thirty-three of this Act, for the purpose of assessment to income tax and reliefs for the year 1937—38 and subsequent years; and

(b) in the case of amounts so deemed by virtue of section thirty-one of this Act, for the purpose of assessment to income tax and reliefs for the year 1938—39 and subsequent years;

and shall apply in relation to the estate of a deceased person whether he

died before or after the commencement of the year 1937—38 or the year 1938—39, as the case may be:

Provided that no income shall be charged to standard tax by virtue of this Part of this Act for the year 1937—38 in a case to which paragraph (a) of this subsection applies, but surtax shall be assessed and charged as if any income which would, but for this proviso, have been charged as aforesaid had in fact been so charged.

(2) Section thirty of the Finance Act, 1922 (which relates to cases where a charity is entitled to a residue), shall not apply to income for the year 1938—39 or for any subsequent year.

(3) Any relief given to any person before the commencement of this Act in respect of any income of which that person is entitled to relief by virtue of this Part of this Act shall be taken as having been given on account of the relief to which he is so entitled.

PART IV—INCOME TAX (SETTLEMENTS)[3]

28. *Income arising under certain settlements to be treated as income of settlor.*—(1) If and so long as the terms of any settlement are such that—

(a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or

(b) the settlor or the wife or husband of the settlor may, whether immediately, or in the future, cease, on the payment of a penalty, to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement;

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall be treated as the income of the settlor for that year and not as the income of any other person:

Provided that, where any such power as is referred to in paragraph (a) of this subsection cannot be exercised within the period of six years from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, the said paragraph (a) shall not apply so long as the said power cannot be exercised.

(2) If and so long as the terms of any settlement are such that—

(a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and

(b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised;

any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall be treated as the income of the settlor for that year and not as the income of any other person:

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[3] See Act of 1942, s. 20; 6th Sched., Part I.

Provided that, where any such power as aforesaid cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, this subsection shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.

(3) If and so long as the settlor has an interest in any income arising under or property comprised in a settlement, any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year, and not as the income of any other person:

Provided that—

(a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this proviso, would be so treated as is proportionate to the extent of that interest; and

(b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of either of the last two foregoing subsections, that amount shall be deducted from the amount of income which, but for this proviso, would be treated as his for that year by virtue of this subsection.

(4) For the purpose of the last foregoing subsection, the settlor shall be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever:

Provided that the settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—

(a) if and so long as that income or property cannot become payable or applicable as aforesaid except in the event of—

(i) the bankruptcy of some person who is or may become beneficially entitled to that income or property; or

(ii) any assignment of or charge on that income or property being made or given by some such person; or

(iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or

(iv) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or

(b) if and so long as some person is alive and under the age of twenty-five during whose life that income or property cannot become payable or applicable as aforesaid except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

(5) The provisions of Part I of the Third Schedule to this Act shall have effect as respects the recovery by a settlor of tax with which he becomes chargeable, and the recovery from a settlor of any additional relief to which he becomes entitled, by virtue of this section.

(6) No repayment shall be made under section twenty-five of the Income Tax Act, 1918 (which relates to relief from tax in respect of income accumulated

under trusts), on account of tax paid in respect of any income which by virtue of this section has been treated as the income of a settlor.

(7) The foregoing provisions of this section shall apply for the purposes of assessment to income tax for the year 1937—38 and subsequent years and shall apply in relation to any settlement, wherever made and whether made before or after the passing of this Act:

Provided that—

(a) for the year 1937—38 no income shall be charged to tax at the standard rate by virtue of this section, but surtax shall be assessed and charged as if any income which would, but for this proviso, have been charged as aforesaid had in fact been so charged; and

(b) for the purpose of granting relief from tax at the standard rate in respect of any income which for the year 1937—38 is treated as the income of a settlor by virtue of subsection (1) or subsection (2) of this section but would be treated as the income of some other person but for that subsection, that income shall be treated as the income of that other person; and

(c) the provisions of this subsection shall have effect, in relation to a settlement made before the twenty-seventh day of April nineteen hundred and thirty-eight, subject to the provisions of Part II of the Third Schedule to this Act, and in that Part of that Schedule, this section is referred to as "the relative section."

29. *Disallowance of deduction from total income of certain sums paid by settlor.*—(1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year for the purposes of surtax, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount of income arising under the settlement in that year which has not been distributed, less—

(a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of subsection (1) or subsection (2) of the last foregoing section; and

(b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of subsection (3) of the last foregoing section.

(2) For the purpose of the last foregoing subsection, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.

(3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.

(4) This section shall apply to any settlement (wherever made) made after the twenty-sixth day of April, nineteen hundred and thirty-eight, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of subsection (1) or subsection (2) of the last foregoing section but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.

(5) In this section references to sums paid by a settlor shall include references to sums paid by the wife or husband of the settlor.

Sums paid to settlor otherwise than as income.—(1) Any capital sum paid directly or indirectly in any relevant year of assessment by the trustees of a settlement to which this section applies to the settlor shall—

(a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;

(b) to the extent to which the amount of that sum exceeds the amount of income available up to the end of that year but falls within the amount of the income available up to the end of the next following year, be treated for the purposes aforesaid as the income of the settlor for the next following year;

and so on.

(2) For the purpose of the last foregoing subsection, the amount of income available up to the end of any year shall, in relation to any capital sum paid as aforesaid, be taken to be the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less—

(a) the amount of any other capital sums paid to the settlor in any relevant year before that sum was paid; and

(b) so much of any income arising under the settlement in that year and any previous relevant year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of subsection (1) or subsection (2) of section thirty-eight of this Act; and

(c) any income arising under the settlement in that year and any previous relevant year which has been treated as the income of the settlor by virtue of subsection (3) of section thirty-eight of this Act; and

(d) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of the last foregoing section, as deductions in computing the settlor's income for that year or any previous relevant year; and

(e) an amount equal to tax at the standard rate on—

(i) the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less

(ii) the aggregate amount of the income and sums referred to in paragraphs (b), (c) and (d) of this subsection.

(3) For the purpose of this section, any capital sum paid to the settlor in any year of assessment by any body corporate connected with the settlement in that year shall be treated as having been paid by the trustees of the settlement in that year.

(4) Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of tax at the standard rate for that year, would be equal to that sum or that part thereof.

(5) This section applies to any settlement wherever made and whether made before or after the commencement of this Act, and in this section—

(a) the expression "capital sum" means—

(i) any sum paid by way of loan or repayment of a loan; and

(ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money's worth;

but does not include any sum which could not have become payable to the settlor except in one of the events specified in the proviso to subsection (4) of section thirty-eight of this Act;

(b) the expression "relevant year" means any year of assessment after the year 1937—38;

(c) references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor.

41. *Supplementary provisions as to settlements.*—(1) The provisions of Part III of the Third Schedule shall have effect for the purpose of carrying this Part of this Act into effect and otherwise for supplementing the provisions thereof.

(2) Paragraph (a) of subsection (1) of section twenty of the Finance Act, 1922, shall cease to have effect, and shall be deemed to have ceased to have effect for the purpose of assessment to surtax for the year 1937—38.

(3) Subject to the last foregoing subsection, the provisions of this Part of this Act shall be in addition to and not in derogation of any other provisions of the Income Tax Acts.

(4) For the purposes of this Part of this Act—

(a) the expression "income arising under a settlement" includes—

(i) any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom; and

(ii) where the amount of the income of any body corporate has been apportioned under section twenty-one of the Finance Act, 1922, for any year or period, or could have been so apportioned if the body corporate were incorporated in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement;

but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom, in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident;

(b) the expression "settlement" includes any disposition, trust, covenant, agreement or arrangement, and the expression "settlor" in relation to a settlement means any person by whom the settlement was made;

(c) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this paragraph) if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

(d) income arising under a settlement in any year of assessment shall

be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—

(i) the sums paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of the last preceding section, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them therein; and

(ii) any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, in so far as such expenses are not included in the sums mentioned in the last foregoing sub-paragraph; and

(iii) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section thirty-seven of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921, exceeds the aggregate amount of any such sums or expenses as aforesaid paid in that year which are properly chargeable to that income;

(e) a body corporate shall be deemed to be connected with a settlement in any year of assessment if any of the income thereof for any year or period ending in that year of assessment—

(i) has been apportioned to the trustees of or a beneficiary under the settlement under section twenty-one of the Finance Act, 1922, or could have been so apportioned if the body corporate had been incorporated in the United Kingdom; or

(ii) could have been so apportioned if the income of the body corporate for that year or period had not been distributed to the members thereof and, in the case of a body corporate incorporated outside the United Kingdom if the body corporate had been incorporated in the United Kingdom.

. . . . . .

PART VII—MISCELLANEOUS AND GENERAL

. . . . . .

55. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1938.

. . . . . .

(3) Parts II, III and IV of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(5) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

. . . . . .

THIRD SCHEDULE
(Sections 38 to 41)

SUPPLEMENTARY PROVISIONS AS TO SETTLEMENTS

PART I

Adjustments between the Settlor and Trustees

1. Where by virtue of any provision of section thirty-eight of this Act any income tax becomes chargeable on and is paid by the settlor, he shall be entitled—

(a) to recover from any trustee, or other person to whom income arises under the settlement, the amount of the tax so paid; and

(b) for that purpose to require the Commissioners concerned to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

2. Any certificate furnished under the last foregoing paragraph shall be conclusive evidence of the facts stated therein.

3. Where any person obtains, in respect of any allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for the provisions of the said section, have been entitled, an amount equal to the excess shall be paid by him to the trustees or other person to whom income arises under the settlement, or where there are two or more such persons shall be apportioned among those persons, as the case may require.

4. If any question arises as to the amount of any payment or as to any apportionment to be made under the last foregoing paragraph, that question shall be decided by the General Commissioners whose decision thereon shall be final.

5. Any income which is treated by virtue of any provision of the said section as income of a settlor shall be deemed for the purpose of this schedule to be the highest part of his income.

PART II

Special Provisions as respects Settlements made before 27th April, 1938

1. Subject to the provisions of this Part of this Schedule, in the case of a settlement made before the twenty-seventh day of April, nineteen hundred and thirty-eight, subsection (1) of the relative section shall not, by reason only of the provisions of paragraph (a) thereof, apply to sums payable by the settlor by virtue or in consequence of any provision of the settlement in a year to which this Part of this Schedule applies, if—

(a) at the expiration of three months from the date of the passing of this Act—

(i) no person has or can have any such power as is referred to in the said paragraph (a); and

(ii) the settlor has not received and is not entitled to receive any consideration in respect of the release or disclaimer of any such power; or

(b) the like annual payments have been payable by the settlor by virtue or in consequence of that provision of the settlement in each of the seven years of assessment ending with a year to which this Part of this Schedule applies; or

(c) before the expiration of three months from the date of the passing of this Act—

(i) the settlement, or the provision by virtue or in consequence whereof the annual payments are payable, has been revoked; and

(ii) a new settlement has been made by the settlor by virtue or in consequence whereof the settlor is liable to make the like annual payments and cannot, except in the event of his death, cease to be liable to make those payments before the expiration of six years from the date when the first of the annual payments payable by virtue or in consequence of the revoked settlement became payable:

Provided that where any income arising under the settlement in a year to which this Part of this Schedule applies has not been distributed, the foregoing provisions of this paragraph shall have effect as if there were substituted for the reference to sums payable by the settlor in that year a reference to the amount, if any, by which the sums so payable in that year exceed the income arising under the settlement in that year which has not been distributed.

2. Subject to the provisions of this Part of this Schedule, in the case of a settlement made before the twenty-seventh day of April, nineteen hundred and thirty-eight, income arising under the settlement in any year to which this Part of this Schedule applies which would, but for this paragraph, be treated by virtue of subsection (2) of the relative section as the income of the settlor and not as the income of any other person, shall not be so treated or, in a case where any income arising under the settlement in that year has not been distributed, shall not be so treated to the extent that it exceeds the amount of income arising under the settlement in that year which has not been distributed if, at the expiration of three months from the date of the passing of this Act—

(a) no person has or can have any such power as is referred to in the said subsection (2); and

(b) the settlor has not received and is not entitled to receive any consideration in respect of the release or disclaimer of any such power.

3. The foregoing provisions of this Part of this Schedule shall not apply to any settlement if, in any year to which this Part of this Schedule applies, any capital sum within the meaning of section forty of this Act has been paid to the settlor directly or indirectly by the trustees of the settlement or any body corporate connected with the settlement in that year.

4. Notwithstanding that the payments payable by virtue or in consequence of any such new settlement as is referred to in sub-paragraph (c) (ii) of paragraph 1 of this Part of this Schedule are payable to or applicable for the benefit of another person for a period which cannot exceed six years from the date when the settlement was made, they shall not be treated as the income of the settlor by virtue of paragraph (b) of subsection (1) of section twenty of the Finance Act, 1922.

5. Paragraphs 1 and 2 of this Part of this Schedule shall not apply to any income which would have been treated as the income of the settlor for any purpose by virtue of paragraph (a) of subsection (1) of section twenty of the Finance Act, 1922, but for the provisions of this Act relating to that paragraph.

6. In this Part of this Schedule references to the settlor, except where that expression first occurs in paragraph 2, include references to the wife or husband of the settlor.

7. The years to which this Part of this Schedule applies are the year 1937—38 and the year 1938—39.

PART III

Miscellaneous

1. Tax chargeable at the standard rate by virtue of sections thirty-eight or forty of this Act shall be charged under Case VI of Schedule D.

2. In computing the liability to income tax of a settlor chargeable by virtue of any of the provisions of section thirty-eight of this Act, the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that provision had been received by him.

3. In computing the liability to income tax of a settlor chargeable by virtue of section forty of this Act, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of that section had been received by him as income.

4. The General or Special Commissioners may by notice in writing require any person, being a party to a settlement, to furnish them (within such time as they may direct, not being less than twenty-eight days) with such particulars as they think necessary for the purposes of any of the provisions of Part IV of this Act, and if that person without reasonable excuse fails to comply with the notice he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

5. Without prejudice to the provisions of the last foregoing paragraph, if any party to a settlement fails to furnish any particulars required under the last foregoing paragraph, or if the General or Special Commissioners are not satisfied with any particulars furnished under that paragraph, they may make an estimate of the amount of income which by virtue of any of the provisions of sections thirty-eight or forty of this Act, is to be treated as the income of the settlor.

THE FINANCE ACT, 1939

(2 & 3 GEO. 6, c. 41)

[28th July, 1939]

PART II—INCOME TAX

13. *Amendments in relation to inter-connected companies.*—(1) For paragraph (c) of subsection (1) of section nineteen of the Finance Act, 1936 . . . there shall be substituted the following paragraph—[1]

(2) Subsection (3) of section fourteen of the Finance Act, 1937 (which enables apportionments under paragraph 8 of the First Schedule to the Finance Act, 1922, to be made in the case of investment companies by reference to rights on winding up) shall apply to sub-apportionments of income apportioned to investment companies as well as to original apportionments under the said paragraph 8 and shall so apply to sub-apportionments notwithstanding that no direction has been given under subsection (1) of section twenty-one of the Finance Act, 1922.

(3) Subject to the last preceding subsection and to any other express provision of this Act, any reference in any enactment to apportioning income under or for the purposes of the provisions, or any specified provisions, of the said section twenty-one or of the said First Schedule shall be construed as a reference not only to apportioning by means of an original apportionment but also to apportioning by means of an original apportionment together with one or more sub-apportionments or series of sub-apportionments, and

[1] See Act of 1936, s. 19 (1) (c), as printed above.

in ascertaining under paragraph (c) of subsection (1) of section nineteen of the Finance Act, 1936, whether or not income could be apportioned among not more than five persons, account shall, in cases where an original apportionment and any sub-apportionment are involved, be taken only of persons to whom income could be finally apportioned as the result of the whole process of original apportionment and sub-apportionment.

(4) In this section the expression "sub-apportionment" means such an apportionment of income as is provided for by section thirty-two of the Finance Act, 1927 (which applies the said section twenty-one to interconnected companies), and the expression "original apportionment" has the same meaning as in the said section thirty-two.

(5) The provisions of this section shall have effect for the purposes of assessments for the year 1936—37 and subsequent years, and shall so have effect in the case of all persons notwithstanding that the liabilities of those persons to tax have been finally determined in whole or in part before the passing of this Act, and notwithstanding that all or any of the relevant powers of the Special Commissioners have, by virtue of something done or omitted to be done before the passing of this Act, ceased to be exercisable; and for the purpose of ensuring that all assessments are made in accordance with the said provisions, the Special Commissioners shall have power to give such directions, make and amend such apportionments, issue such notices, and make and amend such assessments and make such additional assessments, as they think proper, notwithstanding any such determination or cessation as aforesaid.

14. *Apportionment of income to be automatic in the case of certain investment companies.*—(1) Subject to the provisions of this section with respect to companies with estate or trading income, the whole of the actual income from all sources, for every year of assessment, of every investment company to which section twenty-one of the Finance Act, 1922, applies shall, however much or however little thereof has been distributed to its members, be deemed for the purposes of assessment to surtax to be the income of the members of the company, and accordingly the Special Commissioners shall give a direction under subsection (1) of the said section twenty-one in respect of each year of assessment in relation to every such company without considering whether or not the company has distributed a reasonable part of its said income.

(2) The said section twenty-one and any provisions of this or any other Act relating thereto shall apply, with the necessary modifications, in cases in which directions are given by virtue of subsection (1) of this section as they apply in cases in which directions are given by virtue of section fourteen of the Finance Act, 1937, with respect to a year of assessment:

Provided that—

(a) no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing the total income of an individual for the purposes of the Income Tax Acts, other than deductions for any national defence contribution payable by the company or for any such sums disbursed by the company as expenses of management as the Special Commissioners consider reasonable, having regard to the requirements of the company's business and, in the case of directors' fees or other payments for services, to the actual services rendered to the company;

(b) paragraph 5 of the First Schedule to the Finance Act, 1922, and section eighteen of the Finance Act, 1926 (which restrict the powers of the Special Commissioners where statutory declarations

or accounts are furnished to the Commissioners), shall not apply in cases in which directions may be given by virtue of subsection (1) of this section.

(3) The preceding provisions of this section shall not apply to an investment company the whole of the actual income whereof from all sources is estate or trading income.

(4) Where part only of the actual income from all sources of an investment company to which section twenty-one of the Finance Act, 1922, applies is estate or trading income, the provisions of the said section twenty-one and any provisions of this or any other Act relating thereto shall have effect as follows:—

(a) in the first place, they shall have effect as if such part of the actual income from all sources of the company as is not estate or trading income were the whole of the income of the company, and directions shall be given by virtue of subsection (1) of this section accordingly as respects that part;

(b) in the second place and separately (but without prejudice to the treatment of the company as an investment company for the purposes of the said provisions), they shall have effect as if such part of the actual income from all sources of the company as consists of estate or trading income were the whole of the income of the company, and, if the circumstances warrant that course, directions may be given accordingly as respects that part otherwise than by virtue of the said subsection (1):

Provided that—

(i) any income distributed by such a company to its members in such manner that the amount distributed falls to be included in the statements to be made by the members of their total income for the purposes of surtax shall, to the extent of the actual income from all sources of the company other than estate or trading income, be deemed for all purposes to have been distributed out of that other income and not out of the estate or trading income, and be left out of account accordingly in considering whether a reasonable part of the estate or trading income has been so distributed;

(ii) subject as aforesaid, any outgoings of the company of such a nature as to be capable of being taken into account in computing the amount of the actual estate or trading income of the company, in considering whether the company has so distributed a reasonable part of its estate or trading income, or in computing the amount of the actual income from all sources of the company other than estate or trading income, shall be treated as attributable to the estate or trading income or to the income other than estate or trading income, as the case may be, only to the extent that the Special Commissioners consider appropriate.

(5) If in the case of any company the cost of maintenance, repairs, insurance and management (being expenditure of such a nature as to be capable of being taken into account for the purposes of a claim by the company under Rule 8 of No. V of Schedule A) incurred by it in any year of assessment exceeds the amount of the gross estate or trading income of the company for that year, the company shall be entitled, on giving notice in writing to the Special Commissioners within six months of the end of that year and on proof to the satisfaction of those Commissioners of the amount of the excess, to require that the amount of the actual income from all sources of the company, other than estate or trading income, for that year shall be treated, for the purposes of this section, as if it were reduced by an amount equal to that excess:

Provided that, where a deduction is allowable in computing the estate or trading income of the company for any subsequent year by reference to the said Rule 8, no account shall be taken in computing the amount of that deduction of any such excess expenditure which has been taken into account for the purposes of any such reduction as aforesaid.

In this subsection the expression "maintenance" has the same meaning as in the said Rule 8, and the expression "the amount of the gross estate or trading income" means, in the case of any company, an amount computed by adding to the amount of the estate or trading income of the company the total amount of any deductions made in computing that income in respect of the cost to the company of maintenance, repairs, insurance, or management of the nature aforesaid (including any allowance made by reference to Rule 7 of No. V of Schedule A).

(6) The preceding provisions of this section shall not, in the case of any company, apply in relation to any period after an order has been made or a resolution passed for the winding-up thereof, and the period elapsing between the end of the last year of assessment and the making of the order or passing of the resolution shall, for the purposes of subsection (1) of this section, be treated as if it were a year of assessment.

(7) The preceding provisions of this section shall not apply in the case of any company if the Special Commissioners are satisfied that the company exists wholly or mainly for the purpose of carrying on a trade or for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade.

(8) In this section the expression "estate or trading income" means income chargeable to income tax under Schedule A or Schedule B, income arising in respect of the ownership or occupation of land which is chargeable to income tax under Schedule D, and income which is not investment income within the meaning of section twenty of the Finance Act, 1936.

For the purposes of this subsection the expression "land" means lands, tenements, hereditaments and heritages, and the expression "income arising in respect of the ownership or occupation of land," in relation to any building or part of a building, includes profits from the letting thereof furnished.

(9) The preceding provisions of this section shall apply for the purposes of assessment to surtax for the year 1938—39 and subsequent years, and where a direction has been given in relation to a company by virtue of subsection (1) of this section in respect of the whole or any part of the year 1938—39, the Special Commissioners may, for the purposes of assessment to surtax for the year 1937—38, treat the period—

(a) beginning with the end of the last year or other period ending before the fifth day of April, nineteen hundred and thirty-eight, for which accounts of the company have been made up; and

(b) ending with the said fifth day of April, nineteen hundred and thirty-eight;

as if it were a period for which accounts of the company have been made up, or, if they think fit, as if it were a year of assessment for the purposes of subsection (2) of section fourteen of the Finance Act, 1937.

15. Extended powers as to apportionment of income of investment companies.—(1) If in the case of any investment company the Special Commissioners are of opinion that any person who is not a member of the company for the purposes of section twenty-one of the Finance Act, 1922, and the enactments relating thereto is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or

indirectly for his benefit, they may, if they think fit, treat him as a member of the company for the said purposes.

(2) In apportioning for the purposes of the said section twenty-one the income of an investment company—

(a) to any person who is treated as a member of the company by virtue of the preceding subsection; or

(b) to any person who is a member of the company but has no relevant interests in the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit; or

(c) to any person who is a member of the company and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company, considered in relation to the value for those purposes of the relevant interests of other persons therein;

the Special Commissioners may apportion to him such part of the income of the company as appears to them to be appropriate and may adjust the apportionment of the remainder of the company's income as they may consider necessary.

(3) For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able so to do by any means whatsoever, whether he has any rights at law or in equity in that behalf or not, and the Special Commissioners may draw the inference that a person is likely to be able to secure that assets or income of a company will be applied for his benefit, or, as the case may be, will be so applied to a greater extent than is represented in the value for apportionment purposes of any relevant interests which he has in the company, if and only if they are satisfied—

(a) that he has, directly or indirectly, transferred assets to the company the value of which is not represented, or is not adequately represented, in the value for apportionment purposes of any relevant interests which he has in the company; and

(b) that the persons who, whether as directors or shareholders or in any other capacity, have, or will at any material time have, powers or rights affecting the disposal or application of the income or assets of the company are likely to act in accordance with his wishes or that he is able to secure that persons who at the material times will have such powers or rights will be persons likely to act in accordance with his wishes.

(4) Where the Special Commissioners have, under the provisions of this section, apportioned income of a company for any year or period, and the amount apportioned to any member is less than the amount of income distributed to that member by the company in respect of the said year or period in such manner that the amount distributed would, apart from this subsection, fall to be included in the statement of total income to be made by that member for the purposes of surtax, the excess of the amount so distributed over the amount apportioned to that member shall be deemed not to form part of the member's total income from all sources for tax purposes:

Provided that where notice of appeal is given against the apportionment, the reference in this subsection to the amount apportioned to the member shall be construed as a reference to the amount apportioned to him on the final determination of the appeal.

(5) The provisions of paragraphs 1 to 3 of the First Schedule to the Finance Act, 1922 (which relate to appeals), shall apply in relation to an apportionment made by the Special Commissioners under the provisions of this section as they apply in relation to a direction given by those Commissioners under section twenty-one of the said Act, and so much of paragraph 10 of the First Schedule to the said Act as relates to appeals shall not apply.

(6) For the purposes of this section—

(a) references to a person shall, in the case of an individual, be deemed to include the wife or husband of the individual;

(b) the expression "assets" includes property or rights of any kind, and the expression "transfer," in relation to rights, includes the creation of those rights;

(c) the expression "relevant interests" means, in relation to a person connected in any way with a company, interests by reference to which income of the company could be apportioned to him for the purposes of section twenty-one of the Finance Act, 1922, apart from the provisions of this section, and the expression "value for apportionment purposes" means, in relation to any relevant interests in any company, the value falling to be put thereon in apportioning income of the company for the purposes of the said section twenty-one;

(d) references to apportioning income shall be construed as including references both to apportioning by means of original apportionments within the meaning of section thirty-two of the Finance Act, 1927 (which applies the said section twenty-one to interconnected companies), and to apportioning by means of any such apportionment as is provided for by the said section thirty-two.

(7) This section shall apply for the purpose of assessment to surtax for the year 1938—39 and subsequent years.

16. *Additional powers of Special Commissioners to obtain information for purposes of s. 21 of Finance Act, 1922.*—(1) The Special Commissioners may by notice in writing require any investment company to which section twenty-one of the Finance Act, 1922, applies to furnish them within such time, not being less than twenty-eight days, as may be specified in the notice with such particulars as they think necessary for the purposes of the said section twenty-one, or of any provisions of this or any other Act relating thereto.

(2) If any company to whom a notice is issued either under the foregoing subsection or under paragraph 4 of the First Schedule to the Finance Act, 1922, fails, without reasonable excuse, to comply with the notice within the time specified therein, it shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

17. *Explanation and amendment of paragraph 6 of Second Schedule to the Finance Act, 1936.*—(1) It is hereby declared that the particulars which a person must furnish to the Special Commissioners under paragraph 6 of the Second Schedule to the Finance Act, 1936 (which Schedule contains supplementary provisions as to the prevention of avoidance of income tax by transactions resulting in the transfer of income to persons abroad), if he is required by a notice from those Commissioners so to do, include particulars—

(a) as to transactions with respect to which he is or was acting on behalf of others;

(b) as to transactions which in the opinion of the Commissioners it is proper that they should investigate for the purposes of section eighteen of the Finance Act, 1936, notwithstanding that in the

opinion of the person to whom the notice is given no liability to tax arises under the said section;

(c) as to whether the person to whom the notice is given has taken or is taking any, and, if so what, part in any, and if so what, transactions of a description specified in the notice.

(2) Notwithstanding anything in subsection (1) of this section, a solicitor shall not be deemed for the purposes of paragraph (c) thereof to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not in relation to anything done by him on behalf of a client, be compellable under the said paragraph 6, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client and also—

(a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom to or by any such body corporate as is hereinafter mentioned, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee, or of the persons concerned in the associated operations, as the case may be;

(b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is hereinafter mentioned, the name and address of the body corporate;

(c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence whereof income becomes payable to a person resident or domiciled out of the United Kingdom, the names and addresses of the settlor and of that person.

The bodies corporate mentioned in the preceding provisions of this subsection are bodies corporate resident or incorporated outside the United Kingdom which are, or, if they were incorporated in the United Kingdom, would be, investment companies to which section twenty-one of the Finance Act, 1922, applies.

(3) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in paragraph (b) of subsection (2) of this section or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in paragraph (c) thereof.

(4) For the purposes of this section—

(a) the expressions "settlement" and "settlor" have the meanings assigned to them respectively by paragraph (b) of subsection (4) of section forty-one of the Finance Act, 1938;

(b) the expression "investment company" has the same meaning as in section twenty of the Finance Act, 1936.

18. *Power to obtain information as to income from securities.*—(1) The Special Commissioners may by notice in writing require—

(a) any person being a registered or inscribed holder of any United Kingdom securities who, in the year 1939—40 or any subsequent year of assessment, has received on behalf of any other person any income arising from any such securities; or

(b) any person by or through whom, in any such year of assessment, any

income in respect of United Kingdom securities has been paid in any case where—

(i) the registered or inscribed holder of the securities is not the person to whom the income was paid, or

(ii) the securities are bearer securities;

to furnish them within such time as may be specified in the notice (not being less than twenty-eight days) with particulars of the amounts so received or, as the case may be, paid in that year (other than amounts received or paid in that year on behalf of or to any one person which do not exceed in the aggregate the sum of fifteen pounds), the securities to which those amounts respectively relate, and the names and addresses of the persons on whose behalf or to whom those amounts were respectively received or paid.

(2) The Special Commissioners may similarly require any person who acts or has acted, directly or indirectly, as an intermediary or as one of a series of intermediaries between any such person as is specified in paragraphs (a) or (b) of the preceding subsection and the person or persons beneficially entitled to the income in question to furnish such information as the Commissioners may require for the purpose of enabling them to ascertain the names and addresses of the person or persons beneficially entitled to the income and the respective amounts to which those persons were beneficially entitled.

(3) The Special Commissioners may similarly require—

(a) any company which appears to them to be a company to which section twenty-one of the Finance Act, 1922, applies to furnish them with particulars of any bearer securities issued, whether before or after the passing of this Act, by the company, and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person;

(b) any person to whom securities were issued as aforesaid or to or through whom such securities were subsequently sold or transferred to furnish them with such further information as they may require with a view to enabling them to ascertain the names and addresses of the persons beneficially interested in the securities.

(4) If any person to whom the Special Commissioners have given notice as aforesaid fails to comply with the notice within the time specified therein or such further time, if any, as those Commissioners may allow, he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(5) Nothing in this section shall impose on any bank the obligation to disclose any particulars relating to income from securities in cases where the person beneficially entitled to the income is not resident in the United Kingdom.[14a]

(6) In this section—

(a) the expression "securities" includes shares, stocks, bonds, debentures and debenture stock, and, in relation to a company to which subsection (3) of this section applies, also any promissory note or other instrument evidencing indebtedness issued to a person who is a loan creditor thereof;

(b) the expression "United Kingdom securities" means any securities issued by or on behalf of His Majesty's Government in the United Kingdom or the Government of Northern Ireland and any securities of a body corporate incorporated in any part of the United Kingdom;

(c) the expression "loan creditor" has the same meaning as in section twenty of the Finance Act, 1936.

[14a] But see No. 2 Act of 1945, s. 55 (2).

18. *Information as to payments to employees and others.*—(1) In section one hundred and five of the Income Tax Act, 1918 (which requires employers to give particulars of payments made to certain employees), the references to payments made to persons in respect of their employment and to the remuneration of persons in their employment, shall be deemed to include references—

(a) to any payments made after the fifth day of April, nineteen hundred and thirty-eight, to employed persons in respect of expenses;

(b) to any payments made after the said date on behalf of employed persons and not repaid; and

(c) to any payments made after the said date to the employees in a trade or business for services rendered in connection with the trade or business, whether the services were rendered in the course of their employment or not.

(2) Every person carrying on a trade or a business, if required to do so by notice from a surveyor, shall within the time specified in the notice make and deliver to the surveyor a return of all payments or other consideration to which this subsection applies, made or given during a year specified in the notice, giving the names and addresses of the individuals to whom the payments were made or the consideration given, and, in each case, stating the amount of the payment or giving particulars of the consideration, as the case may be; and the provisions of the Income Tax Acts with respect to the failure to deliver lists, declarations and statements in accordance with a particular or general notice shall apply to any such return:

Provided that no payments made to any individual shall be required to be included in any such return if the total amount of the payments to that individual in the year covered by the return does not exceed fifteen pounds.

This subsection applies to any payment or other valuable consideration made or given after the fifth day of April, nineteen hundred and thirty-eight in the course of the trade or business in question or in connection with its formation, acquisition, development or disposal, being a payment or consideration which is in the nature of a commission for services rendered, and is made or given to any individual who is not an employee of the person making the return.

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PART VI

MISCELLANEOUS

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38. *Short title, construction and extent.*—(1) This Act may be cited as the Finance Act, 1939.

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(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

THE COMPENSATION (DEFENCE) ACT, 1939
(2 & 3 GEO. 6, c. 75)

[1st September, 1939]

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2.—(1) The compensation payable under this Act in respect of the taking of any land shall be the aggregate of the following sums, that is to say (a) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land during the period for which possession is retained in the exercise of emergency powers . . .

(2) For the purpose of the enactments relating to income tax . . . and in particular for the purpose of such of these enactments as relate to the deduction of tax from rent, any compensation under the said paragraph (a) shall be deemed to be rent payable for the land, the Crown shall be deemed to pay it as tenant-occupier, and the person receiving it shall be deemed to receive it as landlord.

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THE PERSONAL INJURIES (EMERGENCY PROVISIONS) ACT, 1939
(2 & 3 GEO. 6, c. 82)

[3rd September, 1939]

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8. *Definition of war injuries.*—(1) Unless the context otherwise requires—
"war injuries" means physical injuries

(a) caused by—

(i) the discharge of any missile (including liquids or gas); or

(ii) the use of any weapon, explosive or other noxious thing; or the doing of any other injurious act; either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of, or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

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THE FINANCE (No. 2) ACT, 1939
(2 & 3 GEO. 6, c. 109)

[12th October, 1939]

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PART II

INCOME TAX.

7. *Increase in standard rate.*—(1) The standard rate of income tax for the year 1939—40 shall, as respects the last three quarters of the year, be increased by two shillings to seven shillings and sixpence in the pound.

(2) The said increase shall be averaged over the whole of the said year, and accordingly for the purposes of any enactment referring to the standard rate for the year (including any enactment contained in this Act), and for the purposes of any assessment and any other proceeding or document relating to income tax, the standard rate for the year shall, in relation to the year and every part thereof, be taken to be the rate of five shillings and sixpence in the pound increased by three quarters of two shillings in the pound, that is to say, a rate of seven shillings in the pound:

Provided that for the purpose of the operation of section two of the Provisional Collection of Taxes Act, 1913, as respects payments or deductions made within one month after the fifth day of April, nineteen hundred and forty, the standard rate for the year 1939—40 shall be taken to be the rate of seven shillings and sixpence in the pound.

(3) It is hereby declared that any deductions of tax made before the passing of this Act by reference to a rate of seven shillings in the pound are to be treated for all purposes (including all the purposes of any legal proceedings instituted before the passing of this Act) as having been made by reference to the proper rate; but this section shall not invalidate anything done before the passing of this Act or render improper any deduction in respect of income tax made before the first day of November, nineteen hundred and thirty-nine, which would have been a proper deduction if this Act had not passed.

(4) The provisions of the Sixth Schedule to this Act shall have effect for the purposes of and in connection with the change in the standard rate of income tax made by this section.

8. *Surtax (increased rates).*—(1) Income tax for the year 1938—39 in respect of the excess of the total income of an individual over two thousand pounds shall, instead of being charged at the rates mentioned in section twelve of the Finance Act, 1939, be charged at rates in the pound which respectively exceed the standard rate by the amounts specified in the second column of the following table:—

TABLE

For every pound of the first five hundred pounds of the excess	One shilling and threepence.
For every pound of the next five hundred pounds of the excess	One shilling and sixpence.
For every pound of the next one thousand pounds of the excess	Two shillings and sixpence.
For every pound of the next one thousand pounds of the excess	Three shillings and sixpence.
For every pound of the next one thousand pounds of the excess	Four shillings and threepence.
For every pound of the next two thousand pounds of the excess	Five shillings.
For every pound of the next two thousand pounds of the excess	Six shillings and threepence.
For every pound of the next five thousand pounds of the excess	Seven shillings and sixpence.
For every pound of the next five thousand pounds of the excess	Eight shillings and sixpence.
For every pound of the next ten thousand pounds of the excess	Nine shillings.
For every pound of the remainder of the excess	Nine shillings and sixpence.

(2) The amount payable by virtue of any assessment in respect of surtax for the year 1938—39 made before the passing of this Act shall, by virtue

of this Act and without more, be treated as varied so as to accord with the provisions of subsection (1) of this section.

9. *Alteration of certain allowances.* . . .

(7) Where relief from income tax for the year 1939—40 has been given to any individual and the amount thereof is incorrect by reason of any amendment made by subsection (1) of this section, then—

(a) if the relief was given by reduction of the amount of tax payable under an assessment made on that individual before the passing of this Act, the amount of tax payable shall, by virtue of this Act and without more, be treated as varied so as to give effect to that amendment; and

(b) if the relief was given otherwise than as aforesaid, any amount of relief so given in excess may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that individual accordingly.

10. *Notice of variation of assessment.*—Where the amount of tax payable under an assessment is to be treated as varied by virtue of the Sixth Schedule to, or the last foregoing section of, this Act, or exceeds the amount which would have been payable if that Schedule or section had not passed—

(a) the Commissioners of Inland Revenue shall cause such notification as may be necessary to be given to the person affected thereby; and

(b) any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been contained in a notice of assessment, have effect as if the notification were a notice of assessment.

11. *Relief in respect of diminution of earned income.*[18]—(1) Subject to the provisions of this subsection, any individual who, on a claim made for the purposes of this section within twelve months from the end of the year 1942—43, proves that, owing to circumstances directly or indirectly connected with the present war, his actual earned income for the year 1942—43 is not more than four-fifths of his earned income as assessed for that year, shall be entitled—

(a) to such relief from standard rate tax for that year as will reduce the amount of standard rate tax payable to the amount which would have been payable if his actual earned income had been chargeable instead of his earned income as assessed; and

(b) to such relief from surtax for that year as will reduce the amount of surtax payable to the amount which would have been payable if his actual earned income had been taken into account in computing his total income instead of his earned income as assessed:

Provided that where the actual earned income of the individual for the year 1941—42[18] exceeded his earned income as assessed for that year, the aggregate amount of the said reliefs shall be reduced by the difference between the total amount of income tax (including surtax) payable for the year 1941—42[18] in respect of his income and the total amount of income tax (including surtax) which would have been payable for that year in respect thereof if—

(i) standard rate tax had been charged on his actual earned income instead of on his earned income as assessed; and

[18] Extended to 1940—41 by Act of 1940, s. 23; to 1941—42 by Act of 1941, s. 6; to 1942—43 by Act of 1942, s. 25; to 1943—44 by Act of 1943, s. 17; to 1944—45 by Act of 1944, s. 21; and to 1945—46 by No. 2 Act of 1945, s. 19.

(ii) in the computation of his total income his actual earned income had been taken into account instead of his earned income as assessed.

(2) The relief from standard rate tax for which provision is made by paragraph (a) of subsection (1) of this section shall be given, so far as possible, from second instalments of standard rate tax for the year 1942—43,[15] and, so far as it cannot be so given, shall be given by repayment; and the reduction of relief for which provision is made by the proviso to the said subsection (1) shall be effected, so far as possible, by reducing or extinguishing the said relief from standard rate tax, and only as respects any balance by reducing the relief from surtax for which provision is made by paragraph (b) of that subsection.

(3) If, on a claim made for the purposes of this section within the time limited by subsection (1) thereof, the individual proves that, owing to such circumstances as are mentioned in the said subsection (1), his actual earned income for the year 1942—43[15] was less than his earned income as assessed for that year but it appears that it was more than four-fifths thereof, this section shall nevertheless apply to him, but with the following modifications of paragraphs (a) and (b) of the said subsection (1), that is to say—

(a) the relief from standard rate tax provided for by the said paragraph (a) shall be the relief to which he would have been entitled if his actual earned income had been four-fifths of his *earned income as assessed*,[16] reduced by the difference between his actual earned income and four-fifths of his earned income as assessed; and

(b) the relief from surtax provided for by the said paragraph (b) shall be such reduction, if any, in the amount of the surtax payable by him as would result from including, in computing his total income, four-fifths of his earned income as assessed instead of his earned income as assessed.[16]

Provided that, where the difference between the actual earned income of the individual and four-fifths of his earned income as assessed exceeds the relief to which he would have been entitled under the said paragraph (a) if his actual income had been four-fifths of his earned income as assessed, the relief from surtax to be given by virtue of this subsection shall be reduced by the amount of the excess.[16]

(4) The actual earned income and the earned income as assessed, for the year 1942—43,[15] and, in cases where the proviso to subsection (1) of this section applies, also for the year 1941—42, shall be computed irrespective of losses carried forward from previous years or deductions for wear and tear so carried forward, and effect shall be given to the provisions of the Income Tax Acts providing for relief in respect of such losses and such wear and tear as if, in that year or, as the case may be, those years, the relevant assessments had in fact been made by reference to the actual earned income.

(5) Notwithstanding anything in this section, relief shall not be given thereunder to any individual so as to reduce the amount of tax payable by him below the amount which he is entitled to deduct, retain or charge against any other person.

(6) Section nineteen of the Finance Act, 1925 (which relates to the procedure to be followed where claims are made for certain exemptions and reliefs), shall apply to claims made for the purposes of this section as it applies to the claims therein mentioned.

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[15] See previous page.

[16] Words substituted and proviso added, Finance Act, 1940, s. 22.

(7) In this section, unless the context otherwise requires—

(a) the expression "earned income" means any income which is charged under Schedule B or Schedule D, and is immediately derived by an individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting therein, and any income which is charged under Schedule E;

(b) the expression "earned income as assessed" means, in relation to any year, the amount of earned income assessed and charged to standard rate tax for that year;

(c) the expression "actual earned income" means, in relation to any year, the amount of earned income which would be assessed and charged to standard rate tax for that year if the amount thereof were in all cases computed by reference to the actual income for that year and not by reference to the income for any other year or period;

(d) the expression "standard rate tax" means tax computed by reference to the standard rate;

(e) references to an individual include, in cases where the profits of a wife are deemed to be profits of the husband, references to his wife or her husband, as the case may be.

Part III

Excess Profits Tax

18. *Relation of excess profits tax to income tax.*—(1) The amount of the excess profits tax payable in respect of a trade or business for any chargeable accounting period shall, in computing for the purposes of income tax the profits and gains arising from that trade or business, be allowed to be deducted as an expense incurred in that period:[17]

Provided that where, under the provisions of this Act relating to deficiencies of profits, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under this section shall not be altered but the amount repayable shall be taken into account in computing the profits and gains of the trade or business for the purposes of income tax as if it were a profit of the trade or business accruing in the chargeable accounting period in which the deficiency occurs.

(2) The provisions of this section do not apply to the computation of the profits of a trade or business for the purposes of the national defence contribution.

Part V

General

24. *Short title, construction and extent.*—(1) This Act may be cited as the Finance (No. 2) Act, 1939.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

[17] As to groups of companies, see Act of 1940, 6th Sched., para. 8, p. 612.

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

SIXTH SCHEDULE
(Sections 7 and 10)

PROVISIONS FOR GIVING EFFECT TO THE CHANGE IN THE STANDARD RATE OF INCOME TAX FOR THE YEAR 1939—40

. . . . . .

THE FINANCE ACT, 1940
(3 & 4 GEO. 6, c. 29)

[27th June, 1940]

. . . . . .

PART II—INCOME TAX

Charge of Tax

11. *Income tax for* 1940—41.—(1) Income tax for the year 1940—41 shall be charged at the standard rate of seven shillings and sixpence in the pound,[18] and, in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1939—40, other than such enactments contained in the Finance (No. 2) Act, 1939, as by their terms relate only to tax for the year 1939—40, shall, subject to the provisions of such of the enactments contained in the said Act as by their terms relate only to the year 1940—41 and subsequent years, have effect with respect to the income tax charged for the year 1940—41.

12. *Higher rates of income tax for* 1939—40.—Income tax for the year 1939—40 in respect of the excess of the total income of an individual over two thousand pounds shall be charged at rates in the pound which respectively exceed the standard rate by amounts equal to the amounts by which the rates at which income tax was charged in respect of the said excess for the year 1938—39 respectively exceeded the standard rate for that year.[19]

Rents and annual payments in respect of land

13. *Application and interpretation of provisions as to rents and annual payments.*—(1) The next five succeeding sections apply only to land in the United Kingdom chargeable to tax under Schedule A, and in this and the

[18] See now No. 2 Act of 1940, s. 6, below. [19] *Ibid.*, s. 7.

said next five succeeding sections the following expressions have the meanings hereby respectively assigned to them, that is to say—

"immediate lessor" means in relation to any premises—

(a) if different parts of the premises are the subject of separate tenancies or separate occupations, a lessor of the whole or any part of the premises whose estate or interest extends to the entirety of the premises and is not subject, immediately or mediately, to a lease of the entirety thereof; and

(b) in any other case, a lessor whose immediate tenant is occupying or entitled to occupy the entirety of the premises:

Provided that if, in any case to which paragraph (a) of this definition applies, there is more than one lessor satisfying the conditions set out in that paragraph, that one of those lessors shall be deemed to be the immediate lessor whose estate or interest is not reversionary on the estate or interest of any of the others;

"land" includes tenements, hereditaments and heritages;

"lease" includes an agreement for a lease if the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and "lessee" and "lessor" shall be construed accordingly and include, respectively, the successors in title of a lessee or a lessor;

"long lease" means a lease granted for a term exceeding fifty years, other than a lease which is or takes effect as a lease for a term of years determinable after the death or marriage of any person;

"short lease" means a lease which is not a long lease;

"unit of assessment" means any land which forms a unit of assessment for the purposes of Schedule A.

(2) Where the estate or interest of any lessor of any premises is the subject of a mortgage and either the mortgagee is in possession or the rents and profits are being received by a receiver appointed by or on the application of the mortgagee, that estate or interest shall be deemed for the purposes of subsection (1) of this section and of the next five succeeding sections to be vested in the mortgagee, and references to a lessor and an immediate lessor shall be construed accordingly; but the amount of the liability to tax of any such mortgagee shall be computed as if the mortgagor were still in possession of the premises or, as the case may be, no receiver had been appointed, and as if it were the amount of the liability of the mortgagor that was being computed.

(3) For the purposes of the foregoing definitions—

(a) a lease granted for a term exceeding fifty years shall, if it be not terminable at the option of the lessor before the expiration of fifty years, be deemed to be such a lease notwithstanding that the lease is terminable at the option of the lessee before the expiration of that period; and

(b) a lease terminable at the option of the lessor before the expiration of fifty years shall be deemed to be a lease for a term not exceeding fifty years.

(4) This section shall, in its application to Scotland, have effect as if—

(a) in the proviso to the definition of "immediate lessor" for the words "is not reversionary on the estate or interest of any of the others" there were substituted the words "is dependent upon a lease later in date than any lease upon which the estate or interest of any of the others depends";

(b) for references to a mortgage, mortgagee and a mortgagor there were substituted respectively references to a heritable security,

a creditor in a heritable security and a debtor in a heritable security, and any reference to a receiver included a reference to a judicial factor.

14. *Modification of relief from Schedule A in case of unoccupied houses.*—(1) Notwithstanding anything contained in Rule 4 of No. VII of Schedule A (which provides for relief from tax under Schedule A in respect of any house which is or becomes unoccupied for the year of assessment or for part of the year of assessment) relief from tax under Schedule A shall not be given under that Rule for any period in a year of assessment during which a house is or becomes unoccupied if rent for that period is payable to an immediate lessor in respect of the house under a short lease, and the person liable to pay the rent shall have the same right under Rule 1 of No. VIII of Schedule A of deducting tax as he would have if he were a tenant occupier:

Provided that this subsection shall not operate so as to authorise the levying of any tax for any such period as aforesaid which would fall to be ultimately borne by the person liable to pay the rent.

(2) . . .[20]

15. *Taxation of excess rents of immediate lessors arising under certain short leases.*—(1) If, as respects any year of assessment, the immediate lessor of a unit of assessment is entitled in respect of the unit to any rent payable under a lease or leases to which this section applies, he shall be chargeable to tax under Case VI of Schedule D in respect of the excess, if any, of the amount which would have been the amount of the assessment of the unit for the purposes of Schedule A, as reduced for the purpose of collection, if the annual value of the unit had been determined (in accordance, in whatever part of the United Kingdom the unit is situated, with the Rules applicable to Schedule A set out in the First Schedule to the Income Tax Act, 1918) by reference to that rent and the other terms of the lease or leases, over whichever is the greater of—

(a) the actual amount of the assessment of the unit for the purposes of Schedule A, as reduced for the purpose of collection; or

(b) the amount of any rent payable by the immediate lessor in respect of the unit under any short lease or short leases.

(2) Where the immediate lessor of any unit of assessment is occupying any part thereof, subsection (1) of this section shall apply as if the rent to which he is entitled in respect of the unit under any lease or leases to which this section applies were increased by so much of the annual value of the unit (as ascertained for the purposes of Schedule A) as is attributable to the part which he is occupying.

(3) Where for any year an assessment has been made on an immediate lessor by virtue of this section, the amount of any relief which may be claimed by him under Rule 8 of No. V of Schedule A shall be such amount as could have been claimed by him if the annual value of the unit had been determined in the manner described in subsection (1) of this section.

(4) A lease shall be deemed to be a lease to which this section applies if, and only if, the following conditions are fulfilled with respect to it—

(a) that it is a short lease;

(b) that the land comprised in it is or forms part of a single unit of assessment;

(c) that the rent under it is payable to the immediate lessor of that unit;

(d) that the estate or interest of the immediate lessor of that unit is not, as respects any part of that unit, subject to any short lease which

[20] Repealed, Act of 1941, s. 13 (3).

comprises also land not wholly within that unit, being a lease the rent under which is payable to that immediate lessor.

16. *Taxation of excess rents arising under other short leases.*—(1) A lessor who, as respects any year of assessment, is entitled to any rent in respect of any land under a lease or leases to which this section applies shall be chargeable to tax under Case VI of Schedule D in respect of any excess of that rent over the aggregate of the following amounts, that is to say—

(a) the amount, tax on which at the standard rate is equal to the amount of tax under Schedule A in respect of the land which he is liable to pay, by deduction or otherwise, under the provisions of the Income Tax Acts;

(b) the excess, if any, of the amount of any rent payable by him in respect of the land under any short lease or short leases over the amount referred to in the last preceding paragraph;

(c) if he is liable to pay tenant's rates in respect of the land, the amount borne by him in respect thereof for the year of assessment;

(d) any relief allowed under Rule 1 or Rule 4 of No. V of Schedule A in respect of any such outgoing in respect of the land as is mentioned in those rules respectively, being an outgoing the burden of which would in the year of assessment fall upon him;

(e) if he bears the whole or any part of the burden of an annuity within the meaning of the Tithe Act, 1936, charged in respect of the land, the whole or, as the case may be, a corresponding part of any amount allowable in the year of assessment under subsection (6) of section thirteen of that Act as a deduction in respect of that annuity;

(f) the cost in the year of assessment of any services rendered or goods provided by him otherwise than by way of maintenance or repairs, being services or goods which he is legally bound under the lease or leases to render or provide but in respect of which he receives no separate consideration;

(g) the amount of the cost to him of maintenance, repairs, insurance and management of the land according to the average of the preceding five years, in so far as relief is not given to him in respect of that cost under any other provision of the Income Tax Acts.

(2) The leases to which this section applies are—

(a) short leases of land not wholly comprised in a single unit of assessment;

(b) short leases of land wholly comprised in a single unit of assessment, not being leases to which the last preceding section applies.

17. *Rents under long leases and other annual payments in respect of land.*—(1) This section applies to the following payments, that is to say—

(a) rents under long leases;

(b) other annual sums as defined in paragraph (2) of Rule 4 of No. VIII of Schedule A, not being rents under a short lease or annuities within the meaning of the Tithe Act, 1936,

being payments falling due on or after the sixth day of April, nineteen hundred and forty.

(2) Rules 1 and 4 of No. VIII of Schedule A shall not apply to any payment to which this section applies, but any such payment shall, so far as it does not fall under any other Case, be charged with tax under Case VI of Schedule D and be treated for the purposes of such of the provisions of the Income Tax Acts as apply to royalties paid in respect of the user of a patent as if it were such a royalty.

(3) A deduction from a payment to which this section applies made on account of income tax at any time after the fifth day of April, nineteen hundred and forty, and before the passing of this Act which would have been a legal deduction if the provisions of this section had been in force at that time, shall be deemed for all purposes to have been a legal deduction to which all the provisions of Rule 19 or Rule 21 of the General Rules, as the case may be, were applicable; and the provisions of subsection (2) of section two hundred and eleven of the Income Tax Act, 1918, shall have effect as if this section had come into operation on the sixth day of April, nineteen hundred and forty.

(4) Notwithstanding anything in this section, sections thirty-seven and thirty-eight of the Income Tax Act, 1918, (which provide for giving relief from tax to hospitals and certain other bodies) shall be construed as if any tax chargeable by virtue of this section under Schedule D were chargeable under Schedule A.

(5) Any payment made in respect of land in Scotland for the period ending on the fifteenth day of May, nineteen hundred and forty, shall be treated for the purposes of this section as if it had become due at the commencement of that period.

18. *Information.*—The surveyor may, for the purpose of ascertaining whether there is any and if so what liability to tax under the last four preceding sections, give notice to any person who is entitled to any rent or other annual payment in respect of any land or is in receipt of any rent or other such annual payment belonging to any other person requiring him to deliver, within the time limited by the notice and in such form as may be prescribed by the Commissioners of Inland Revenue, such particulars relating to the land and the rent or other annual payment as may be prescribed by those Commissioners, and the provisions of the Income Tax Acts relating to notices to deliver, the delivery of, and the penalties for neglecting to deliver, returns and statements shall apply for the purposes of, and in relation to notices under, this section.

Miscellaneous

19. *Extension of classes of income from foreign possessions taxable though not received in the United Kingdom.*—(1) In Rule 1 of the Rules applicable to Case V of Schedule D (which provides for the taxation of income arising from certain possessions out of the United Kingdom irrespective of the receipt of the income in the United Kingdom) for the words "income arising from stocks, shares or rents in any place out of the United Kingdom" there shall be substituted the words "income arising from possessions out of the United Kingdom other than income which—

"(a) is immediately derived by a person from the carrying on by him of any trade, profession or vocation either solely or in partnership; or

"(b) arises from any office, employment or pension."

(2) In Rule 2 of the said Rules (which provides for the taxation of income arising from certain possessions out of the United Kingdom by reference to the sums received in the United Kingdom) for the words "other than stocks, shares or rents" there shall be substituted the words "other than income to which Rule 1 applies."

(3) The amendment effected by subsection (2) of this section shall apply both in relation to Rule 2 as originally enacted and in relation to the Rule substituted therefor in respect of possessions in Eire by Part II of the Second Schedule to the Finance Act, 1926, but nothing in subsection (1) or subsection (2) of this section shall affect the tax chargeable in respect of the

lands, tenements or hereditaments in Eire to which the proviso to the said substituted Rule 2 applies.

20. *Provisions as to dividends paid without full deduction of tax.*—(1) Where any dividend from which deduction of tax is authorised by Rule 20 of the General Rules is paid without deduction of tax, the amount received in respect thereof shall, for the purposes of the Income Tax Acts, be deemed to be a net amount received in respect of a dividend from the gross amount of which such deduction as is authorised by the said Rule 20 has been made, and the provisions of—

(a) section thirty-three of the Finance Act, 1924 (which imposes certain obligations in relation to the form of dividend warrants, etc.);

(b) subsection (3) of section twelve of the Finance Act, 1930 (which relates to cases where on payment of dividends, not being preference dividends within the meaning of that section, income tax has been deducted by reference to a standard rate greater or less than the standard rate for the year); and

(c) subsection (2) of section seven of the Finance Act, 1931 (which directs that, subject to the provisions of that subsection, dividends are to be deemed for all the purposes of the Income Tax Acts to represent income of such an amount as would after deduction of tax be equal to the net amount received),

shall apply accordingly.

(2) A preference dividend paid without deduction of tax shall not be treated as a preference dividend within the meaning assigned to that expression by subsection (4) of the said section twelve, and, in the proviso to subsection (2) of the said section seven, the words " within the meaning assigned to that expression by subsection (4) of section twelve of the Finance Act, 1930 " shall be substituted for the words " to which section twelve of the Finance Act, 1930, applies."

(3) The foregoing provisions of this section shall apply where, though a deduction is made from a dividend, that deduction is less than the full amount authorised, as it applies where no deduction is made:

Provided that nothing in this subsection shall be construed as applying the said provisions to any dividend paid before the passing of the Act imposing the tax for the year by reason only that the deduction made therefrom was made by reference to a standard rate lower than that ultimately imposed for the year.

(4) This section shall have effect with respect to the year 1939—40 and all subsequent years of assessment:

Provided that so much of this section as applies the provisions of section thirty-three of the Finance Act, 1924, shall have effect only in relation to warrants, cheques and orders drawn or made, or purporting to be drawn or made, after the expiration of one month from the date of the passing of this Act.

21. *Amendment of provisions relating to tax-free income.*—(1) Where a banking business, an assurance business or a business consisting wholly or partly in dealing in securities is carried on in the United Kingdom by a person not resident therein, then—

(a) in computing the profits arising from, or loss sustained in, the business for any of the purposes of the Income Tax Acts; and

(b) in the case of an assurance business, also in computing for the purposes of subsection (2) of section sixteen of the Finance Act, 1923, the profits or loss arising from the granting of annuities on human life,

all interest, dividends and other payments whatsoever to which paragraph (d) of Rule 2 of the General Rules applicable to Schedule C extends (whether by virtue of the terms of the said paragraph or by virtue of any other provision of the Income Tax Acts expressly or impliedly extending the operation of the said Rule 2) shall be included notwithstanding the exemption from tax conferred by the said Rule 2.

In this subsection, the expression "securities" includes stocks and shares.

(2) Where—

(a) any such business as aforesaid is carried on in the United Kingdom by a person not ordinarily resident therein; and

(b) in making any such computation as aforesaid with respect to that business, any interest on any securities issued by the Treasury is excluded by virtue of a condition of the issue thereof regulating the treatment of the interest thereon for income tax purposes,

any interest on money borrowed for the purpose of acquiring the securities, any other expenses attributable to the acquisition or holding of, or to any transaction in, the securities, and any profits or losses so attributable, shall also be excluded in making that computation.

(3) In the case of an assurance company not having its head office in the United Kingdom which carries on life assurance business through any branch or agency in the United Kingdom—

(a) in computing for the purposes of Rule 3 of Case III of Schedule D the income from the investments of the life assurance fund of the company, any such interest, dividends or payments as are mentioned in subsection (1) of this section shall be included notwithstanding the exemption from tax referred to in that subsection; and

(b) where any interest on any securities issued by the Treasury is excluded in computing the said income by virtue of a condition of the issue thereof regulating the treatment of the interest thereon for income tax purposes, the relief to be granted under section thirty-three of the Income Tax Act, 1918, in respect of expenses of management shall be reduced so as to bear to the amount of relief which would be granted but for the provisions of this paragraph the same proportion as the amount of that income, excluding the said interest, bears to the amount of that income including that interest.

(4) The foregoing provisions of this section shall apply in relation to any computation for the purposes of tax for the year 1940—41 or any subsequent year of assessment, notwithstanding that the computation is required to be made by reference to any year or period other than the year of assessment and those provisions were not in force in that year or period or some part thereof.

(5) For the avoidance of doubt, it is hereby declared that where any income of any person is by virtue of any provisions of the Income Tax Acts, and in particular, but without prejudice to the generality of the foregoing words, by virtue of section eighteen of the Finance Act, 1936, (which contains provisions for preventing avoidance of income tax by transactions resulting in the transfer of income to persons abroad) to be deemed to be income of any other person, that income is not exempt from income tax either—

(a) as being derived from a security issued by the Treasury with any such condition as is mentioned in the foregoing provisions of this section; or

(b) by virtue of Rule 2 of the General Rules applicable to Schedule C; or

(c) by virtue of the said Rule 2 as extended by any provision of the Income Tax Acts which expressly or impliedly extends the operation of the said Rule 2,

by reason of the first-mentioned person not being resident, or not being ordinarily resident, or being neither domiciled nor ordinarily resident, in the United Kingdom.

. . . . . .

24. *Double claims for children relief.*—(1) The provisions of this section shall have effect where, for any year of assessment, two or more individuals are, or would but for the provisions of this section be, entitled, under section twenty-one of the Finance Act, 1920, as amended by subsequent enactments, to relief in respect of the same child.

(2) The relief to be granted to each of the individuals shall be computed as if subsection (1) of the said section twenty-one had provided—

(a) that the aggregate of the deductions allowable thereunder in respect of any child should not exceed the amount specified in that subsection; and

(b) that that amount should be apportioned between the individuals in question in such proportion as they agree or, in default of agreement, in proportion to the amount or value of the provision made by them respectively (otherwise than by way of payments deductible in computing their respective total incomes for the purposes of the Income Tax Acts) for the child's maintenance and education for the year of assessment.

(3) Any apportionment under this section shall be made by such body of General Commissioners, being the General Commissioners for a division in which one of the individuals resides, as the Commissioners of Inland Revenue may direct, or, if none of the individuals resides in Great Britain, by the Special Commissioners.

(4) Where a claim for relief under the said section twenty-one is delivered to the surveyor, and it appears that if the claim is allowed an apportionment will be necessary under this section the Commissioners of Inland Revenue may, if they think fit, direct that the claim itself shall be dealt with by any specified body of Commissioners which could under this section be directed to make the apportionment, and that the same Commissioners shall also make any apportionment which proves to be necessary; and where a direction is given under this subsection no other body of Commissioners shall have jurisdiction to determine the claim.

(5) The Commissioners making any apportionment under this section shall hear and determine the case in like manner as they hear and determine appeals against an assessment under Schedule D, and the enactments relating to such appeals shall apply accordingly with any necessary modifications, but any individual who is, or but for the provisions of this section would be, entitled to relief in respect of the child shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

(6) An apportionment may be made under this section notwithstanding that relief in respect of the child in question has already been allowed to any individual, and if it appears as a result of the apportionment that the individual has been allowed too much relief, the amount of the excess may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from him accordingly.

25. *Postponement of quinquennial revaluation.*—The years of assessment for which a revaluation of properties in Great Britain for the purposes of income tax chargeable under Schedules A and B shall be made under section twenty-seven of the Finance Act, 1930, shall, instead of being the year 1941—42 and each fifth succeeding year of assessment, be such year subsequent to the

year 1941—42 as Parliament may hereafter determine and each fifth year of assessment succeeding the year so determined, and references in the Income Tax Acts to a year of revaluation shall be construed accordingly.

PART III—EXCESS PROFITS TAX . . .

28. *New provisions as to inter-connected companies.*[21]—(1) Subsections (2) to (5) of section seventeen of the Finance (No. 2) Act, 1939, are hereby repealed and in lieu thereof the provisions of the Fifth Schedule to this Act shall have effect: . . .

In this subsection and the said Schedule, the expression "a group of companies" means two or more bodies corporate of which—

(a) one (in this subsection and in that Schedule referred to as "the principal company") is resident in the United Kingdom and is not a subsidiary of any other body corporate resident in the United Kingdom; and

(b) the remainder (whether or not resident or carrying on business in the United Kingdom) are subsidiaries of the principal company,

and the expression "a subsidiary member" means any member of a group of companies other than the principal company.

. . . . . .

(3) The provisions of subsection (6) of the said section seventeen (which defines the expression "subsidiary") shall have effect for the purposes of this section and the said Schedule as they have effect for the purposes of the said section seventeen:

Provided that a body corporate which, under the said subsection (6), is a subsidiary of two or more bodies corporate, each of which is resident in the United Kingdom and none of which is a subsidiary of any other body corporate resident in the United Kingdom, shall, for the purposes of subsection (1) of this section and of the said Schedule, be treated as a subsidiary of such one only of those bodies corporate as the Commissioners may direct.

PART V—MISCELLANEOUS

. . .

65.—(1) This Act may be cited as the Finance Act, 1940.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(6) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

. . . . . .

FIFTH SCHEDULE

PROVISIONS AS TO EXCESS PROFITS TAX . . . IN THE CASE OF INTERCONNECTED COMPANIES

PART IV

. . . . . .

9.—(1) Section eighteen of the Finance (No. 2) Act, 1939, (which contains provisions as to the relation of excess profits tax to income tax) shall, in

[21] See No. 2 Act of 1945, s. 49 and 6th Sched.

relation to the trade or business of any member of a group of companies, have effect subject to the provisions of this paragraph.

(2) The excess profits tax payable in respect of the trade or business of a subsidiary member for any chargeable accounting period shall, in lieu of being deducted as an expense in computing the profits and gains arising from that trade or business, be deducted in computing the profits and gains arising from the trade or business of the principal company as an expense incurred on the last day of the said chargeable accounting period.

(3) The proviso to subsection (1) of the said section eighteen shall not have effect, but where relief from excess profits tax in respect of the trade or business of any member of a group of companies for any chargeable accounting period is given as the result of any deficiency of profits or any liability to the national defence contribution of any member of the group occurring in any chargeable accounting period—

(a) the amount of the deduction provided for by subsection (1) of the said section eighteen or by the last preceding sub-paragraph shall not be altered; but

(b) the amount of the relief shall be taken into account in computing for the purposes of income tax the profits and gains arising from the trade or business of the principal company as if it were a profit of that trade or business arising—

(i) on the last day of the chargeable accounting period from excess profits tax for which relief is given, or

(ii) on the last day of the chargeable accounting period in which the deficiency of profits occurred or for which the liability to the national defence contribution arose,

whichever day is the later.

(4) Where in the case of any chargeable accounting period of a subsidiary member an amount falls to be paid by the subsidiary member to the principal company or the Commissioners under sub-paragraph (2) of the last preceding paragraph, that amount—

(a) shall be deducted in computing for the purposes of income tax the profits and gains arising from the trade or business of the subsidiary member as an expense incurred in that chargeable accounting period; and

(b) shall be taken into account in computing for those purposes the profits and gains arising from the trade or business of the principal company as if it were a profit of that trade or business arising on the last day of the said chargeable accounting period.

(5) Where, in the case of a chargeable accounting period of a subsidiary member, an amount falls to be paid by the principal company to the subsidiary member under subparagraph (3) of the last preceding paragraph, that amount—

(a) shall be deducted in computing for the purposes of Income Tax the profits and gains arising from the trade or business of the principal company as an expense incurred on the last day of the said chargeable accounting period; and

(b) shall be taken into account in computing for the said purposes the profits and gains arising from the trade or business of the subsidiary member as if it were a profit of the trade or business arising in the said chargeable accounting period.

(6) If—

(a) in any such case as is mentioned in subparagraph (3) or paragraph (b)

of subparagraph (4) of this paragraph, the trade or business of the principal company; or

(b) in any such case as is mentioned in paragraph (b) of subparagraph (5) of this paragraph, the trade or business of the subsidiary member, is a business of life assurance or a business consisting wholly or mainly in the holding of investments or other property, the amount which would under those provisions respectively be taken into account in computing for the purposes of income tax the profits and gains arising from the trade or business of the principal company or, as the case may be, the subsidiary member, shall be assessable to income tax under Case VI of Schedule D.

(7) The provisions of this paragraph shall, in relation to any body corporate, have effect with respect to any year of assessment income tax for which is, in the case of that body corporate, affected by the profits or gains of any period any part of which falls within any chargeable accounting period to which the provision in question relates.

THE FINANCE (No. 2) ACT, 1940
(3 & 4 GEO. 6, c. 48)

[22nd August, 1940]

PART II

INCOME TAX

6. *Increase in standard rate.*—(1) The standard rate of income tax for the year 1940—41 shall be eight shillings and sixpence in the pound, instead of seven shillings and sixpence in the pound as provided by subsection (1) of section eleven of the Finance Act, 1940.

(2) It is hereby declared that any deductions of tax made before the passing of this Act by reference to a rate of eight shillings and sixpence in the pound are to be treated for all purposes (including all the purposes of any legal proceedings instituted before the passing of this Act) as having been made by reference to the proper rate; but this section shall not invalidate anything done before the passing of this Act or render improper any deduction in respect of income tax made before the first day of September, nineteen hundred and forty, which would have been a proper deduction if this Act had not passed.

(3) The provisions of the Fifth Schedule to this Act shall have effect for the purposes of and in connection with the change of the standard rate of income tax made by this section.

7. *Surtax (increased rates).*—(1) Income tax for the year 1939—40 in respect of the excess of the total income of an individual over two thousand pounds shall, instead of being charged at the rates mentioned in section twelve of the Finance Act, 1940, be charged at rates in the pound which

respectively exceed the standard rate by the amounts specified in the second column of the following Table:—

TABLE

For every pound of—	s.	d.
the first five hundred pounds of the excess	2	0
the next five hundred pounds of the excess	2	3
the next one thousand pounds of the excess	3	3
the next one thousand pounds of the excess	4	3
the next one thousand pounds of the excess	5	0
the next two thousand pounds of the excess	5	9
the next two thousand pounds of the excess	7	0
the next five thousand pounds of the excess	8	3
the next five thousand pounds of the excess	9	0
the remainder of the excess	9	6

(2) The amount payable by virtue of any assessment in respect of surtax for the year 1939—40 made before the passing of this Act shall, by virtue of this Act and without more, be treated as varied so as to accord with the provisions of subsection (1) of this section.

8. *Alteration of certain reliefs.*

. . . . . .

(4) The amendments made by this section shall have effect as respects the year 1940—41 and subsequent years.

9. *Provisions as respects life insurance.*—(1) As respects the year 1940—41, and any subsequent year for which the standard rate of income tax exceeds seven shillings in the pound, section thirty-two of the Income Tax Act, 1918 (which relates to relief in respect of life insurance premiums), shall have effect, in relation to premiums paid for any such insurance or contract as is mentioned in paragraph (a) of subsection (1) of that section or section twenty of the Finance Act, 1932, as if the standard rate were seven shillings in the pound.

(2) As respects the year 1940—41 and subsequent years, no allowance shall be made under the said section thirty-two in respect of the amount, if any, by which the premiums or other sums in respect of which relief is claimed exceed the claimant's taxable income, that is to say, his total income less any amount on which he is, by virtue of subsection (1) of section forty of the Finance Act, 1927, entitled to relief by way of a deduction of tax.

(3) Where an assurance company carrying on life assurance business claims and proves to the satisfaction of the Commissioners of Inland Revenue that it has for the year 1940—41, or any subsequent year for which the standard rate of income tax exceeds seven shillings and sixpence in the pound, borne tax by deduction or otherwise in respect of income from investments held in connection with its life assurance business, the company shall be entitled to repayment of so much of the tax borne by it for the year in question as is equal to the amount by which—

(a) the tax borne by the company for that year in respect of such part of that income as, in the opinion of those Commissioners, belongs to, or is allocated to or reserved for, or expended on behalf of, policy holders;

exceeds—

(b) the tax which would have been so borne in respect of that part of that income if the standard rate of income tax for that year had been seven shillings and sixpence in the pound.

(4) For the purpose of the last foregoing subsection, the amount of tax which has been or would be borne by a company shall be taken to be the amount of tax which has been or would be so borne after the allowance of any relief to which the company is or would be entitled otherwise than under that subsection.

10. *Consequential provisions as respects reliefs.*—Where relief from income tax for the year 1940—41 has been given to any individual and the amount thereof is incorrect by reason of any amendment of the Income Tax Acts made by the foregoing provisions of this Part of this Act then—

(a) if the relief was given by reduction of the amount of tax payable under an assessment made on that individual before the passing of this Act, the amount of tax payable shall, by virtue of this Act and without more, be treated as varied so as to give effect to that amendment; and

(b) if the relief was given otherwise than as aforesaid, any amount of relief so given in excess may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that individual accordingly.

11. *Assessment and collection of tax under Schedule E.* . [1]

(3) Proceedings in England for the summary recovery as a civil debt of any tax charged under Schedule E may be brought at any time within one year from the time when the matter complained of arose.

12. *Disallowance of certain payments in respect of war risks.*—(1) In computing the amount of the profits or gains of any person for any purpose of the Income Tax Acts for the year 1940—41 or any subsequent year, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(a) the expenses of management in respect of which relief may be claimed for any such year under section thirty-three of the Income Tax Act, 1918, (which relates to life assurance companies and others); or

(b) the cost of maintenance, repairs, insurance and management in respect of which relief may be claimed for any such year under Rule 8 of No. V of Schedule A.

(3) This section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage:

Provided that—

(a) where the payment is made in respect of the right or eligibility aforesaid and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section; and

(b) this section shall not apply to any payment made under—

(i) any policy of insurance issued under Part II of the War Risks Insurance Act, 1939, or any similar enactment in force in any country outside the United Kingdom; or

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[1] Sub-ss. 1 and 2 repealed for 1944—45 and onwards, Offices and Employments Act, 1944, s. 9 and Sched.

(ii) any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.

(4) In this section the expression "war damage" means loss or damage arising from action taken by an enemy of His Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation or in consequence of an attack by such an enemy.

. . . . . .

PART VI

GENERAL

42. *Short title, construction, extent and repeal.*—(1) This Act may be cited as the Finance (No. 2) Act, 1940.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

FIFTH SCHEDULE

(Section 6)

PROVISIONS FOR GIVING EFFECT TO THE CHANGE IN THE STANDARD RATE OF INCOME TAX

1. The amount of tax payable by virtue of any assessment made before the passing of this Act shall, by virtue of this Act and without more, be treated as varied to such extent as is necessary to give effect to the change in the standard rate:

Provided that this paragraph shall not apply in the case of income chargeable under Schedule C, under Rule 6 or Rule 7 of the Miscellaneous Rules applicable to Schedule D, or under Rule 21 of the General Rules.

2. In the case of such income as is mentioned in the proviso to paragraph 1 of this Schedule—

(a) any deficiency in the amount of tax deducted from any payment made before the first day of September, nineteen hundred and forty (being a deficiency arising by reason of the change in the standard rate made by this Act) shall, so far as possible, be made good by increasing the deduction required or authorised by law to be made from the next payment and, if necessary, the deductions required or authorised by law to be made from subsequent payments (being a payment or payments made after the passing of this Act and before the first day of September, nineteen hundred and forty-one), by an amount equal to the amount of the deficiency;

(b) the deficiency so made good shall be accounted for and assessed in the same manner as the tax deducted from the original payment;

(c) if and in so far as the deficiency is not so made good—

(i) the deficiency shall be charged under Case VI of Schedule D; and

(ii) the agent entrusted with the making of the payment, or the person by or through whom the payment was made, as the case may be, shall furnish to the Commissioners of Inland Revenue the name and address of the person to whom the payment was made and the amount of the payment upon a requisition made by those Commissioners in that behalf.

3. Subject, in any case where paragraph 2 of this Schedule applies, to the provisions of that paragraph, subsection (2) of section two hundred and eleven of the Income Tax Act, 1918 (which relates to the deduction of tax not deducted before the passing of the annual Act), shall apply as if—

(a) this Act were the Act imposing the tax for the year; and

(b) a reference to the first day of September, nineteen hundred and forty were, so far as relates to any deficiency in the amount of tax deducted from any payment made after the passing of this Act but before the date aforesaid, substituted for any reference to the passing of the Act imposing the tax for the year.

THE FINANCE ACT, 1941
(4 & 5 Geo. 6, c. 30)

[22nd July, 1941]

. . . . . .

PART II

INCOME TAX

4. *Income tax for* 1941—42.—(1) Income tax for the year 1941—42 shall be charged at the standard rate of ten shillings in the pound, and, in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1940—41, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1941—42.

5. *Higher rates of income tax for* 1940—41.—Income tax for the year 1940—41 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the year 1940—41 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

6. *Alteration of certain reliefs* . . .

7. *Provision for the crediting of certain amounts of income tax.*[1]—(1) Subject, as respects married persons, to the provisions of subsection (2) of this section, for every year of assessment for which subsections (2), (3) and (4) of the last preceding section are in force, there shall be ascertained and recorded, in relation to every individual who is entitled to any relief under subsection (1)

[1] See No. 2 Act of 1945, s. 17 (4), p. 779.

or subsection (3) of section fifteen of the Finance Act, 1925, or under section eighteen of the Finance Act, 1920, the amount of tax ultimately borne by him which is attributable to the passing of the said subsections (2), (3) and (4); and the amount so ascertained and recorded shall be notified to him as soon as possible and shall be credited to him on such date as may be fixed by the Treasury, being a date so soon as may be after the termination of hostilities in the present war.[a]

(2) If—

(a) a man's wife has income for any such year and, in relation to that year, he is, and she is not, such an individual as is mentioned in subsection (1) of this section: and

(b) an application that this subsection shall have effect in relation to them for that year is made by either of them in such manner and within such period as may be prescribed by regulations made by the Commissioners of Inland Revenue,

the amount ascertained and recorded under the said subsection (1) in relation to that man for that year shall, instead of being credited wholly to him, be credited partly to him and partly to her, in such proportions as may be agreed between them, or as may, in default of agreement, be determined by—

(i) ascertaining what the said amount would have been if, in the said subsection (1), for the references to subsections (2), (3) and (4) of the last preceding section, there had been substituted references to so much of the said subsection (2) as amends subsection (1) of section fifteen of the Finance Act, 1925; and

(ii) apportioning that part of the amount between them in proportion to their respective earned incomes for the said year; and

(iii) apportioning the remainder of the amount between them in proportion to their respective total incomes for the said year, reduced, if relief has been given for that year under subsection (1) of the said section fifteen, by the appropriate sum in respect of earned income relief.

In this subsection, the expression "the appropriate sum in respect of earned income relief" means, in relation to a man or his wife, a sum equal to one-tenth of his or her earned income for the year in question, or, if their combined earned incomes for the year exceed fifteen hundred pounds, a sum which bears to a hundred and fifty pounds the same proportion that his or her earned income for the year bears to their combined earned incomes for the year.

(3) The procedure for the ascertainment and recording of the amounts to be ascertained and recorded under subsection (1) of this section and for the determination of the matters to be determined under subsection (2) of this section shall be such as may be prescribed by regulations made by the Commissioners of Inland Revenue, and those regulations shall provide for the giving of notice to the persons affected and for appeals, and, without prejudice to the generality of the foregoing words, the regulations may apply any of the enactments relating to appeals from assessments to income tax.

(4) Any assignment of or charge on any amount to be credited under this section, and any agreement for any such assignment or charge, shall be void, and any such amount shall be exempt from death duties payable on any death occurring before the date fixed by the Treasury under subsection (1) of this section; but any claim to any such amount shall, subject as aforesaid, be transmissible as if it were a debt due from the Crown, and references in the foregoing provisions of this section to an individual, a man or his wife

[a] See Employments Act, 1943, s. 3 (5).

shall, except where the context otherwise requires, be deemed to include references to persons claiming through or under them respectively:

Provided that nothing in this subsection shall affect any assignment or charge made by the personal representatives of any person acting in their capacity as such, or any agreement for any such assignment or charge.

. . . . . .

9. *Limit to relief in respect of insurance premiums to be calculated by reference to pre-war income.*—(1) This section applies to the relief to be granted under section thirty-two of the Income Tax Act, 1919 (which relates to life insurance premiums and other similar payments), for the year 1939—40 or any subsequent year of assessment for any part of which the Emergency Powers (Defence) Act, 1939, is in force.

(2) In paragraph (a) of subsection (3) of the said section thirty-two . . . the reference to total income shall be construed as a reference to total income for the year of assessment in question or total income for the year 1938—39, whichever is the higher.

10. *Farming and market gardening to be charged under Schedule D.*—(1) Subject, as respects farming and farm land, to the provisions of the next succeeding section, farming and market gardening shall be treated as trades for the purposes of income tax and accordingly—

(a) the profits or gains thereof shall be charged under Case I of Schedule D; and

(b) income tax shall not be charged under Schedule B in respect of the occupation of any farm land or market garden land:

Provided that where land is farm land or market garden land for part only of the year of assessment, tax shall be charged under Schedule B on that land for that year on so much of the assessable value of that land as is apportionable to the remainder of that year, and any such apportionment shall be made by reference to the number of months or parts of a month in the said remainder of the year.

(2) For the purposes of this and the next succeeding section the following expressions have the meanings hereby respectively assigned to them, that is to say,—

"market garden land" means land occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops) and "market gardening" shall be construed accordingly;

"farm land" means land wholly or mainly occupied for the purposes of husbandry, not being market garden land, and includes the farm house and farm buildings, if any, and "farming" shall be construed accordingly;

"land" means land in the United Kingdom;

"period of computation" means, in relation to a year of assessment, the period by reference to the profits or gains of which the profits or gains arising or accruing from farming are to be computed for that year.

(3) All the farming carried on by any particular person or partnership or body of persons shall be treated as one trade, and he or they shall be assessable and chargeable in respect of the profits or gains thereof in any of the parishes in which any part of his or their farm land is situated:

Provided that nothing in this subsection shall limit any right to make any assessment and charge in the place of ordinary residence.

(4) The question whether or not a trade has been discontinued or a new trade set up or commenced shall not, in the case of farming, be affected by the fact that, for particular years of assessment, the person or partnership or body of persons carrying on the farming is not or was not chargeable under

Schedule D in respect thereof (whether by virtue of the next succeeding section or by reason of the fact that this section was not then in operation), and the period of computation for any year of assessment may, in the case of farming, be a period falling wholly or partly within a year or years of assessment for which the person, partnership or body of persons carrying on the farming was not chargeable under that Schedule.

(5) In considering, in relation to farming, whether any, and if so what, relief may be given to any person for the year 1941—42 or any subsequent year of assessment under section thirty-three of the Finance Act, 1926, or section twenty-nine of the Finance Act, 1927 (which relate to the carrying forward of losses), there may, if that person or a partnership of which he is a member is, by virtue of this section, chargeable under Schedule D for the year 1941—42 in respect of his or their farming, be carried forward to the year 1941—42 and subsequent years of assessment from the years of assessment preceding the year 1941—42 the amount (if any) which would have fallen to be carried forward to those years respectively if that person and every partnership of which he was a member had been charged under Schedule D in respect of his or their farming for all those preceding years and had been given in those preceding years all the relief which he or they could have been given under those sections if he or they had been so charged.

(6) Where on a claim made for the purposes of this subsection within twelve months from the end of the year 1941—42 it is proved that the profits or gains from farming in that year of any individual or partnership of individuals are less than the amount of the profits or gains by reference to which he or they is or are charged under this section for that year—

(a) that individual or partnership of individuals shall be entitled to such relief from income tax, other than surtax, as will reduce the amount of income tax, other than surtax, payable to the amount which would have been payable if he or they had been charged by reference to the actual profits or gains for that year;

(b) the individual, or, in the case of a partnership of individuals, each of the individuals, shall be entitled to such relief from the surtax, if any, payable by him for that year as will reduce the amount of surtax so payable to the amount which would have been payable if the individual or, as the case may be, the partnership had been charged as aforesaid.

11. *Cases where farming is exempted from compulsory assessment under Schedule D.*—(1) If, for the year 1941—42 or any subsequent year of assessment, the total annual value of the farm and market garden land of an individual in the relevant period, together with so much of the annual value of the farm and market garden land of any partnership of which he is a member during that period as is proportionate to his share for that period in the partnership income, does not exceed *one hundred pounds*[a] in all, so much of the last preceding section as requires the profits or gains of farming to be charged under Schedule D as the profits or gains of a trade shall not apply in relation to him for that year of assessment and he shall be assessed and charged to income tax for that year in respect of the occupation of his farm land as if the said provisions had not been passed.

(2) In this section the expression "the relevant period" means, in relation to any year of assessment, the twelve months immediately preceding that year of assessment, unless the individual in question began farming during the year of assessment, in which case it means that part of the year of assessment during which he was farming.

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[a] Substituted for "three hundred pounds" by Act of 1942, s. 29 (1).

(3) In this section the expression "annual value" means, in relation to any land, the total annual value thereof for the purposes of Schedule A (whether or not separately assessed under that Schedule) before any reduction is made for the purposes of collection:

Provided that where—

(a) any land is not occupied by a particular individual or partnership for the whole of the relevant period; or

(b) any land is occupied by a particular individual or partnership for the whole of the relevant period but the relevant period is less than twelve months,

the annual value of the land shall, in relation to that individual or partnership, be deemed for the purposes of this section to be reduced so as to bear to the full amount thereof the same proportion that the length of the period for which the land is so occupied during the relevant period, or the length of the relevant period, as the case may be, bears to twelve months.

(4) The foregoing provisions of this section shall apply in relation to any body of individuals carrying on farming in partnership as they apply in relation to an individual:

Provided that the said provisions shall not apply to any partnership in the case of any year of assessment if any of the partners carries on farming in that year of assessment in such circumstances that the said provisions do not apply to him.

(5) If, for the year 1941—42 or any subsequent year of assessment, an individual or a partnership of which an individual is a member is assessed under Schedule B in respect of any of his or their farming land, that individual shall not, for the year for which he is so assessed or any subsequent year, be allowed any deduction or set off under section thirty-three of the Finance Act, 1926, or section twenty-nine of the Finance Act, 1927, in respect of any loss sustained in farming in any year previous to the year for which he is so assessed.

12. *Provisions as to assessments made under Rule 8 of No. VII of Schedule A.*—(1) An assessment to income tax made under Rule 8 of No. VII of Schedule A shall be valid as against all persons although not made on the person who should have been assessed and the tax under any assessment to income tax made under the said Rule 8 may be recovered from the person who is the landlord of the land to which the assessment relates on the first day of January in the year of assessment for which the assessment was made:

Provided that where that person is not the person named in the assessment the provisions of Part I of the First Schedule to this Act shall have effect in relation to the recovery of that tax from him.

(2) Any tax under any assessment to income tax made under the said Rule 8 may also (so far as not otherwise recovered) be recovered in accordance with the provisions of Part II of the said Schedule by requiring rent to be paid over in or towards the satisfaction of the tax.

(3) Any tax under any assessment to income tax made under the said Rule 8 in respect of any house or building let in different apartments or tenements and occupied by two or more persons severally may also (so far as not otherwise recovered) be recovered from all or any of those persons in accordance with the provisions of Part III of the said Schedule.

(4) The powers conferred by the last preceding subsection shall, as respects the cases to which that subsection applies, be in lieu of the power conferred by the proviso to Rule 8 of No. VII of Schedule A to recover from the occupiers, but, save as aforesaid, the powers conferred by this section are in addition

to and not in derogation of any other powers conferred by the Income Tax Acts for the recovery of tax.

13. *Recovery of Schedule A tax from immediate lessor.*—(1) Any tax payable under Schedule A for any year of assessment in respect of any land which is not otherwise recovered may be recovered from the person who is for the time being the immediate lessor of the land as if he had been charged therewith and in the same way as any other tax charged on him may be recovered:

Provided that the tax recovered under this section shall not exceed tax at the standard rate for the said year of assessment on the total sums becoming payable during the year by way of rent under short leases of the land or of any part thereof, being rent payable to, or to the assignee of, the person who was the immediate lessor of the land when the rent became payable.

(2) In this section, the expressions "immediate lessor" and "short lease" have the meanings assigned to them by section thirteen of the Finance Act, 1940.

. . . . . .

14. *Information.*—(1) For the purpose of facilitating the recovery of tax assessed under Schedule A in respect of any land, the surveyor or the collector may serve on any person who is or has been liable to pay rent for the whole or any part of that land or is or has been in receipt of any such rent, whether on his own behalf or on behalf of another, a notice in the prescribed form requiring him to furnish, within such time as may be specified in the notice, such particulars with respect to the amount of the rent, the dates on which it is or was payable and the person to whom it is or was payable or, as the case may be, is or was accounted for, as may be so specified.

(2) Any person who fails to comply with the requirements of a notice duly served on him under this section, or, in furnishing the particulars required by any such notice, makes any statement which he knows to be false in any material particular or recklessly makes any statement which is false in any material particular, shall be liable to a penalty not exceeding fifty pounds.

15. *Provisions supplemental to three preceding sections.*—(1) In the three last preceding sections and in the First Schedule to this Act, the expression "land" includes tenements, hereditaments and heritages, and the expression "prescribed" means prescribed by the Commissioners of Inland Revenue.

(2) Any notice to be served under the said sections or the said Schedule may be served by post.

(3) The said sections and the said Schedule shall apply in relation to assessments made before the passing of this Act (for whatever year of assessment) and to assessments made thereafter, but nothing therein shall affect any legal proceedings instituted, or render illegal anything done, before the passing of this Act for the recovery of any tax.

16. *Provisions as to Schedule A tax on land sustaining war damage.*—(1) Where—

(a) any land which is the subject of a short lease suffers war damage, and in consequence the lease comes to an end or the rent thereunder ceases to be payable or is reduced; and

(b) the Commissioners of Inland Revenue are satisfied that the lessee is unable to deduct tax which he would otherwise have been entitled to deduct under any of the Rules of No. VIII of Schedule A,

those Commissioners shall give to him, by repayment or otherwise, such relief from tax as will in their opinion reduce the amount of tax under Schedule A

ultimately borne by him in respect of the land for the year of assessment (or that part thereof for which tax is payable) to what it would have been if the damage had not occurred.

(2) Where relief is given under subsection (1) of this section, the tax covered by the relief may be recovered from the persons by whom it would have ultimately been borne if the damage had not occurred, as if they had been respectively charged therewith and in the same way as any other tax charged on them may be recovered.

(3) In this section the expressions "land" and "short lease" have the meanings assigned to them by section thirteen of the Finance Act, 1940, and the expression "war damage" has the meaning assigned to it by section eighty of the War Damage Act, 1941; and for the purposes of this section a person shall be deemed ultimately to bear tax under Schedule A in respect of any land to the extent, and to the extent only, that tax has been paid by him in respect thereof by deduction or otherwise and is not deductible by him under any of the Rules of No. VIII of Schedule A from rent payable by him in respect of the land.

(4) This section shall apply to tax for the year 1940—41 and any subsequent year of assessment.

17. *Disallowance for income tax purposes of certain payments in respect of war injuries to employees.*—(1) In computing the amount of the profits or gains, or total income, of any person for any purpose of the Income Tax Acts, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(a) the expenses of management in respect of which relief may be claimed under section thirty-three of the Income Tax Act, 1918; or

(b) the cost of maintenance, repairs, insurance and management in respect of which relief may be claimed under Rule 8 of No. V of Schedule A; or

(c) the expenses of management or supervision in respect of which relief may be claimed under section twenty-six of the Finance Act, 1922.

(3) This section applies—

(a) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employee of his on account of their incapacity, retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere;

(b) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death as aforesaid:

Provided that—

(i) this section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before the third day of September, nineteen hundred and thirty-nine, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date;

(ii) this section shall not apply to any payment by way of benefit if, in the opinion of the Commissioners of Inland Revenue, that

payment was made under an established practice which was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.

(4) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Commissioners of Inland Revenue, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.

(5) Where a person makes a payment to which this section applies by way of premium or contribution and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Commissioners of Inland Revenue, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.

(6) In this section the expression " war injuries " has the meaning assigned to it by the Personal Injuries (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 82).

18. *Trades affected by certain arrangements for concentration of industry or business.*—(1) This section applies to any arrangements made with a view to the concentration of industry or business in the hands of fewer persons, being arrangements certified by or on behalf of the Board of Trade to be approved by them and to be in their opinion in the national interest, having regard to the exigencies of the present war.

(2) Where, in pursuance of any such arrangements, a person ceases to carry on all or any of the activities theretofore carried on by him in connection with his trade, or undertakes activities not theretofore carried on by him in connection with his trade, the cessation or undertaking of the activities shall not be treated, for any of the purposes of the Income Tax Acts, as effecting a discontinuance of that trade or the setting up or commencement of a new trade.

(3) Any sum becoming payable, in pursuance of any such arrangements, to, or to the successor of, any such person as is mentioned in the last preceding subsection by any other person who was or has become a party to the arrangements, not being a sum in the nature of a capital payment or a sum from which income tax has been deducted under any provision of the Income Tax Acts, shall—

(a) notwithstanding anything contained in Rule 3 of the Rules applicable to Cases I and II of Schedule D, be allowed as a deduction in computing, for any of the purposes of the Income Tax Acts, the profits or gains of the trade of the person by whom the said sum becomes payable; and

(b) be treated for this purposes of the Income Tax Acts as a trading receipt of the person to whom the said sum becomes payable and be taken into account accordingly in computing the profits or gains of the trade of that person.

(4) Where, in pursuance of any such arrangements as aforesaid, machinery or plant of any such person as is mentioned in subsection (3) of this section [illegible] ceased during any period, the amount of any deduction allowable under Rule 5 of the Rules applicable to Cases I and II of Schedule D in respect

of the wear and tear of that machinery or plant shall be computed as if the machinery or plant were in normal use.

(5) For the purposes of this section the expression "person" includes a partnership.

18. *Allowance for exceptional depreciation.*—(1) Where any buildings, machinery or plant have, after the beginning of the year nineteen hundred and thirty-seven, been provided for the purposes of a trade by the person carrying on that trade, then, if either—

(a) on such date as Parliament may hereafter determine *the value of the buildings, machinery or plant, or where the buildings, machinery or plant have ceased to exist as such, the value of the remains thereof is less than the net cost thereof;*[4] or

(b) the buildings, machinery or plant are sold before the said date at a price which is less than the net cost thereof,

and in either case the deficiency is wholly or mainly ascribable to conditions prevailing as a consequence of the present war and exceeds—

(i) the aggregate amount of any deductions for wear and tear or depreciation already allowed in respect of the buildings, machinery or plant otherwise than under this section; plus

(ii) any payments made or to be made under Part I or Part II of the War Damage Act, 1941, in respect of damage to the buildings, machinery or plant, other than payments in respect of damage made good before the said date or before the previous sale of the buildings, machinery or plant, as the case may be,[5]

there may be allowed in charging the profits or gains of the trade under Schedule D for the year 1939—40, and every subsequent year of assessment, such proportion of the excess as is properly attributable to the year in question.

The reference in this subsection to deductions for wear and tear shall be construed as including a reference to the additional deduction under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938.

(2) Pending an ascertainment whether any allowance falls to be made under subsection (1) of this section in respect of buildings, machinery or plant, the Commissioners of Inland Revenue, if they are satisfied that any buildings, machinery or plant provided as aforesaid are of such a character that it is likely that the conditions specified in that subsection will be fulfilled in the case thereof, may direct that there shall be allowed in any such year of assessment as aforesaid such sums as they think fit, not exceeding ten per cent. of the net cost of the buildings, machinery or plant, but any such allowance shall be provisional only, and on the coming of the said date, or, as the case may be, on the previous sale of the buildings, machinery or plant, the amount thereof shall be adjusted so as to accord with the provisions of the said subsection.

(3) In this section, the expression "net cost" means, in relation to any buildings, machinery or plant, the cost of the provision thereof (being cost of a capital nature) less any sum provided, or to be provided, directly or indirectly by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by any other person other than the person carrying on the trade, towards the cost of the provision of the buildings, machinery or plant, or towards any wear and tear or depreciation thereof, not being a sum provided, or to be provided, either by way of loan

[4] See Income Tax Act, 1945, Part VII, and ss. 58, 59: also Finance No. 2 Act, 1945 ss. 58, 59; 6th Sched., Pt. II.

[5] Words substituted, Income Tax Act, 1945, s. 48; see also ss. 49, 51.

or under Part I or Part II of the War Damage Act, 1941; and references to Part I of the War Damage Act, 1941, shall be construed as including references to any similar Act applying to war damage to which the said Part I does not apply.

(4) Where a trade has been transferred by one person to another person, any buildings, machinery or plant provided for the purposes of the trade by the person transferring it which were transferred with the trade and continue to be used for those purposes after the transfer shall, for the purposes of this section, be deemed to have been provided for the purposes of the trade not only by the person transferring the trade but also by the person to whom the trade is transferred:

Provided that the amount of any allowance granted under this section to the person to whom the trade is transferred shall, if necessary, be so reduced as to secure that the total allowances granted to the said persons in respect of any buildings, machinery or plant affected by the transfer are not greater than the total allowances which could have been granted to the person making the transfer if the transfer had not taken place.

The provisions of this subsection shall apply in relation to the transfer of part of a trade as they apply in relation to the transfer of the whole of a trade.

(5) Where, for any purpose of the Income Tax Acts, account is required to be taken of any deductions allowed or deemed to have been allowed in respect of wear and tear of any machinery or plant for any years prior to the year of assessment, or of the aggregate of the amount of those deductions and of any such deduction for the year of assessment, any allowance which has been made in respect of the machinery or plant under the provisions of this section for any of the said years, or which could have been so made if the profits or gains of the trade had been assessable under Schedule D for that year, shall, for that purpose, be treated as if it were part of the deduction in respect of wear and tear for that year.

(6) If for any year of assessment tax has been charged without such allowance as is due for that year by virtue of the provisions of this section having been given, or without it having been given to the full extent, such adjustment as may be necessary to give effect to those provisions shall be made by repayment or otherwise, and if any allowance or deduction has been given which, by virtue of the provisions of this section, should not be given, or has been given to a greater extent than is proper under this section, such additional assessments as may be necessary shall be made.[a]

. . . . . .

21. *Place of assessment under Schedules D and E.*[b]—(1) Where, owing to circumstances directly or indirectly connected with the present war, a trade, profession or vocation is being carried on in a parish other than that in which it was previously carried on, and either—

(a) the person carrying on the trade, profession or vocation delivers to the surveyor, before the end of June in the year of assessment, a notice of his request that he may be assessed and charged under Schedule D in a parish specified in the notice, being a parish in which the trade, profession or vocation has been carried on at any time since the sixth day of April, nineteen hundred and thirty-nine; or

(b) the surveyor delivers to him a notice stating that unless within twenty-one days from the date of the notice he objects in writing to the surveyor he will be assessed and charged under Schedule D in a

[a] See No. 2 Act of 1945, s. 39 (6).

[b] As to Sched. E (apart from emoluments connected with the Armed Forces), reg. 62, of the Emergency Regulations, 1944, appears to supersede this provision.

parish specified in the notice, being such a parish as aforesaid, and he does not so object,

he shall be assessed and charged accordingly instead of in the parish in which he would have been assessable and chargeable if this subsection had not been passed:

Provided that, in relation to the year 1941—42 paragraph (a) of this subsection shall have effect as if for the word "June" there were substituted the word "August."

(2) Where, owing to circumstances directly or indirectly connected with the present war, it is in the opinion of the Commissioners of Inland Revenue expedient that a person assessable under Schedule E should be assessed and charged under that Schedule in some parish other than that in which he would be assessed and charged but for the provisions of this section, he shall be assessed and charged accordingly:

Provided that a person assessed and charged in accordance with this subsection shall, unless he appeals to the General Commissioners for the parish in which he is assessed and charged have the same rights of appeal to the same Commissioners as he would have had if he had been assessed and charged in the parish in which he would have been assessable and chargeable if this subsection had not been passed.

. . . . . .

23. *Expenses of weekly wage earners in travelling to and from their work.*[7]

24. *Rents under long leases, etc. in Scotland.*—(1) Any payment made in respect of land in Scotland for the period ending on the fifteenth day of May in any year, being a payment to which section seventeen of the Finance Act, 1940 (which applies to rents under long leases and other annual payments in respect of land), applies, shall be treated for the purposes of the Income Tax Acts as if it had become due at the commencement of that period.

(2) In this section the expression "land" has the same meaning as in the said section seventeen.

Tax-free Payments, etc.

25. *Modification of provisions for tax-free annuities, etc.*[7a]—(1) Subject to the provisions of this section, any provision, however worded, for the payment, whether periodically or otherwise, of a stated amount free of income tax, or free of income tax other than surtax, being a provision which—

(a) is contained in any deed or other instrument, in any will or codicil, in any order of any court, in any local or personal Act, or in any contract, whether oral or in writing; and

(b) was made before the third day of September, nineteen hundred and thirty-nine; and

(c) has not been varied on or after that date,

shall, as respects payments falling to be made during any year of assessment the standard rate of income tax for which is ten shillings in the pound, have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof.

(2) Where any such provision as is mentioned in subsection (1) of this section is a provision for a payment free of income tax (and not merely a provision for a payment f ee of income tax other than surtax) the sum, if any, to be paid under that provision to make good the requirement that the payment shall be free of surtax shall, in the case of surtax for the year

[7] Repealed, Employments Act, 1943, s. 5 (3), and 3rd Sched.

[7a] Amended for 1946—47 and future years by No. 2 Act of 1945, s. 20.

preceding any such year of assessment as is mentioned in the said subsection (1), be reduced to twenty twenty-ninths of the sum which would have been sufficient for that purpose if the rates of surtax in force for the year 1937—38 had applied to the year for which the surtax is payable.

(3) A person who is entitled under any such provision as is mentioned in subsection (1) of this section to a payment free of income tax, or free of income tax other than surtax, shall be entitled to the following adjustment of his surtax for the year 1940—41, that is to say, his total income for that year, so far as it is ascribable to his rights under that provision, shall be reduced to what it would have been if in his case—

(a) the rates of surtax in force for the year 1937—38 had applied also to the years 1938—39, 1939—40 and 1940—41; and

(b) the 1938—39 rates of income-tax, other than surtax, had applied also to the years 1939—40 and 1940—41; and

(c) the rights and liabilities of the persons concerned had been modified accordingly.

(4) If, in the case of a payment to which subsection (1) of this section applies, the relations of the payee and payor are such that the payee is accountable to the payor for so much of any relief from income tax which he receives as is ascribable to the payment—

(a) the liability of the payee to account to the payor shall be limited to twenty twenty-ninths of the sum for which he would have been accountable if the 1938—39 rates of income tax, other than surtax, had applied to the year of assessment in which the payment falls to be made, and the foregoing provisions of this section had not passed; and

(b) the relief to be given shall be calculated as if—

(i) the gross sum represented by the payment were what it would have been if the 1938—39 rates of income tax, other than surtax, had applied to the year of assessment in which the payment falls to be made, and the foregoing provisions of this section had not passed; and

(ii) that gross sum had borne income tax at ten shillings in the pound.

(5) This section shall not—

(a) affect any provision falling within Rule 23 of the General Rules (which renders invalid agreements not to deduct tax);

(b) affect any provision if, by virtue of any provision in the same or any other deed, instrument, will, codicil, order, local or personal Act or contract, which contemplates rises in the rates of income tax, the payments thereunder have ceased, or, in the event of further rises in the rates of income tax, may cease, to be wholly free of income tax, or, as the case may be, wholly free of income tax other than surtax;

(c) apply to any emoluments of any office, employment, annuity, pension or stipend taxed under Schedule E; or

(d) apply to any dividends or shares of profits.

20. *Modification of provisions for tax-free salaries, pensions, etc.*—(1) This section applies to offices, employments, annuities, pensions and stipends taxed under Schedule E, where by virtue of—

(a) some provision which is contained in a contract (whether oral or in writing) made before the third day of September, nineteen hundred

and thirty-nine, and which has not been varied on or after that date; or

(b) some provision which is contained in an enactment passed before the said third day of September and which has not been amended on or after that date,

the emoluments include a payment to or for the benefit of the recipient of the emoluments in respect of his income tax.

(2) The amount, if any, payable, in a case to which this section applies, to or for the benefit of the recipient of the emoluments in respect of his income tax for the year 1941—42 or any subsequent year of assessment, other than surtax, shall not exceed the amount which would have been payable if the 1938—39 rates of income tax, other than surtax, had applied to the year of assessment in question.

(3) The amount, if any, payable, in a case to which this section applies, to or for the benefit of the recipient of the emoluments in respect of his surtax for the year 1940—41 or any subsequent year of assessment shall not exceed the amount which would have been payable if the rates of surtax in force for the year 1937—38 had applied to the year of assessment in question.

(4) In a case to which this section applies, the recipient of the emoluments shall be entitled to the following adjustments of his liability to income tax for the year 1941—42 and surtax for the year 1940—41, that is to say, his total emoluments for the purposes of the said income tax, and his total income for the purposes of the said surtax so far as it is ascribable to the emoluments, shall be reduced to what they would have been if in his case—

(a) the rates of surtax in force for the year 1937—38 had applied also to the years 1938—39, 1939—40 and 1940—41; and

(b) the 1938—39 rates of income tax, other than surtax, had applied also to the years 1939—40 and 1940—41; and

(c) the rights and liabilities of the persons concerned had been modified accordingly.

27. *Interpretation of provisions relating to tax-free payments and power to make regulations.*—(1) For the purposes of the provisions of this Act relating to tax free payments—

(a) a provision, however worded, for the payment of such sum as will after deduction of income tax be equal to a stated amount, shall be treated as a provision for the payment of the said stated amount free of income tax, other than surtax; and

(b) the expression "a stated amount" includes a stated fraction of the gross amount of any specified income (that is to say, of the amount of that income before income tax has been charged thereon, whether by deduction or otherwise), but does not include a stated fraction of the net amount of any specified income (that is to say, of the amount of that income after it has been charged to income tax, whether by deduction or otherwise);

(c) the expression "if the 1938—39 rates of income tax, other than surtax, had applied" means, in relation to a year of assessment, if the standard rate of tax for the year had been five shillings and sixpence in the pound and the provisions of the Income Tax Acts relating to relief from tax had not been amended in any respect by any Act passed since the third day of September, nineteen hundred and thirty-nine.

(2) The Treasury may by regulations provide for adjustments between parties where payments to which the said provisions of this Act apply have

been made before the passing of this Act otherwise than in accordance with those provisions.

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PART IV

MISCELLANEOUS AND GENERAL

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52. *Short title, construction and extent.*—(1) This Act may be cited as the Finance Act, 1941.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(5) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

. . .

FIRST SCHEDULE

RECOVERY ETC. OF TAX ASSESSED UNDER RULE 8 OF NO. VII OF SCHEDULE A
(Sections 12 and 15)

PART I

Provisions as to recovery from the landlord where he is not the person named in the assessment

1. Legal proceedings shall not be instituted against a person as having been the landlord on the first day of January in the year of assessment (where he is not the person named in the assessment) until the expiration of twenty-one days from the service on him by the surveyor of a notice in writing, in the prescribed form, specifying the land and the amount of tax claimed and stating that it is intended to proceed against him for the recovery thereof as having been the landlord of that land on the first day of January in the year of assessment for which the assessment was made.

2. Any person served with such a notice may appeal to the General Commissioners on giving within the said period of twenty-one days notice in writing to the surveyor of his intention to appeal and stating the ground of his appeal.

3. Any such appeal may be against the amount of the assessment or may be founded upon the contention that the appellant was not the landlord of the land on the said first day of January:

Provided that no such appeal shall lie against the amount of the assessment if an appeal has already been brought against it by him or by any other person under any other provision of the Income Tax Acts.

4. If any appeal is brought under this Schedule, or if any appeal is pending under any other provision of the Income Tax Acts at the date of the service of the notice, no legal proceedings shall be instituted against any such person as is mentioned in paragraph 1 of this Schedule to recover the tax until the General Commissioners have determined the appeal.

5. Where no appeal is brought or is pending as aforesaid, it shall be conclusively presumed that the person on whom the notice was served was the

landlord of the land on the said first day of January and that the amount of tax specified in the notice is due from him so far as it still remains unpaid; and where an appeal is brought or is pending as aforesaid, the same presumption shall be made except so far as it is inconsistent with the determination of the appeal.

6. A certificate of the surveyor as to any of the following matters, that is to say, the service of such a notice as aforesaid, the contents of the notice, and the fact that no appeal was brought or pending as aforesaid, a certificate of the clerk to the General Commissioners as to the bringing and the results of any such appeal, and a certificate of the collector that the sum specified in the certificate has become due and remains unpaid in respect of the tax in respect of the land in question, being, in any case, a certificate in the prescribed form, shall, in any legal proceedings, be sufficient evidence of the facts stated in the certificate; and any document purporting to be any such certificate as it is mentioned in this paragraph shall be deemed to be such a certificate until the contrary is proved.

7. A person on whom a notice is served under this Schedule shall not thereafter be entitled to give notice of appeal against the assessment under paragraph 3 of Part II of the First Schedule to the Finance Act, 1930.

8. This Schedule applies to the distraining of a person by his goods and chattels or the poinding of the goods and effects of a person as it applies to the institution of legal proceedings against him.

PART II

Recovery by requiring payment over of rent

1. The collector may serve a notice in writing in the prescribed form on the landlord for the time being or on any other person who receives any rent paid in respect of the whole or any part of the land to which the assessment relates (being rent received in the right of the landlord or by virtue of an assignment or mortgage of, or charge on, some right of the landlord in, or in rent from, the whole or some part of the land) requiring the landlord or other such person as aforesaid to pay to the collector in or towards the satisfaction of the tax any sums from time to time received on account of rent, or as the case may be, such rent as aforesaid until the liability in respect of the tax has been satisfied, and the person on whom the notice is served shall pay all such sums over to the collector accordingly and, if he is accountable for the rent to any other person, he shall be acquitted and discharged as against that other person by the payment.

2. If any landlord or other person on whom a notice has been duly served as aforesaid fails to comply with the requirements of the notice, he shall, in respect of each payment of rent with respect to which any such failure occurs, be liable to a penalty not exceeding fifty pounds.

PART III

Recovery from occupiers

1. The collector may from time to time by notice in writing in the prescribed form demand from the occupiers for the time being of all or any of the parts of the house or building payment, on the date or dates specified in the notice, of such sum or sums as may be required to satisfy the tax:

Provided that—

(a) no such notice shall demand from the occupier of any part payment of any sum on a date after the last date on which rent becomes due from him in respect of that part; and

(b) the sum demanded from the occupier of any part to be paid during any period during which rent is accruing due from him in respect of that part shall not exceed the amount of that rent becoming due at the end of that period.

2. In default of payment by any occupier of any amount duly demanded of him under this Part of this Schedule, that amount may be recovered from him in like manner as if he had been charged with tax of that amount.

3. Where any sum on account of the tax has been collected from an occupier in pursuance of this Part of this Schedule, he may deduct that sum from any subsequent payment on account of rent and shall be acquitted and discharged of the amount so deducted.

THE FINANCIAL POWERS (U.S.A. SECURITIES) ACT, 1941

(4 & 5 Geo. 6, c. 36)

[29th July, 1941]

2. Release of, and payment for, securities and income.

(3) Where—

(a) any security has been placed at the disposal of the Treasury by virtue of this Act, and any income or other payment arising therefrom before the release of the security, or the extinguishment of the right to the release thereof, is applied in pursuance of the Agreement; or

(b) any income arising from any such branch of an insurance company as aforesaid is so applied,

the Treasury shall, as soon as may be after the income or payment is so applied, pay in respect thereof such sum as appears to them to have been the sterling equivalent of the income or payment at the time when it arose.

(7) The Treasury shall make regulations for securing that, where a payment under this section is made in respect of any income arising from securities or other possessions out of the United Kingdom, a person who would have been chargeable to income tax in respect of such income so far only as that income had been received in or remitted to the United Kingdom shall not be chargeable to income tax in respect of the payment except to the extent that it becomes available for use in the United Kingdom, and no part of such a payment shall be deemed to be available for use in the United Kingdom so long as it is dealt with only in such manner as may be provided by the regulations.

4. *Short title, interpretation and extent.*—(1) This Act may be cited as the Financial Powers (U.S.A. Securities) Act, 1941.

(2) In this Act the expression "security" includes shares, stocks, bonds, notes, debentures, certificates of beneficial interest, and warrants conferring an option to acquire securities.

(3) It is hereby declared that this Act extends to Northern Ireland.

. . . . . .

THE FINANCE ACT, 1942
(5 & 6 GEO. 6, c. 21)

[24th June, 1942]

PART III

INCOME TAX

21. *Income tax for* 1942—43.—(1) Income tax for the year 1942—43 shall be charged at the standard rate of ten shillings in the pound, and, in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1941—42, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1942—43.

22. *Higher rates of income tax for* 1941—42.—Income tax for the year 1941—42 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the year 1941—42 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

. . . . . .

24. *Period of assessment in case of certain weekly wage-earners.* . . .[1]

26. *Expenses of employees, etc. in travelling to and from their work.*—(1) If it is shown in the case of a person assessed to income tax under Schedule E in respect of any office or employment[1] that his place of work or his residence has changed through circumstances connected with the present war, and that in consequence he is obliged to incur and defray out of the emoluments of the office or employment additional expense in travelling between his residence and his work, the additional expense so incurred and defrayed shall be allowed as a deduction from emoluments in computing the amount of the assessment, so, however, that not more than ten pounds shall be so allowed in the case of any person in any year.

(2) In this section the expression "emoluments" has the same meaning as in section forty-five of the Finance Act, 1927.

[1] Repealed, Employments Act, 1943, s. 5 (3).

27. *Continuance of allowance for repairs.*—(1) Section twenty-eight of the Finance Act, 1923 (which relates to the allowance for repairs and which was continued in force by section sixteen of the Finance Act, 1937, until the fifth day of April, nineteen hundred and forty-two), shall continue in force until the fifth day of April, nineteen hundred and forty-seven.

(2) This section shall be deemed to have had effect as from the sixth day of April, nineteen hundred and forty-two.

28. *Farming.*—

. . . . . .

(3) Rule 5 of the Rules applicable to Schedule B (which allows farmers who would otherwise be charged under Schedule B to elect to be charged under Schedule D) shall not have effect as respects tax for the year 1942—43 or any subsequent year of assessment, except in so far as it is applied in relation to woodlands by Rule 7 of the said Rules.

(4) In considering, in relation to farming, whether any, and if so what, relief may be given to any person for the year 1942—43 or any subsequent year of assessment under section thirty-three of the Finance Act, 1926, or section twenty-nine of the Finance Act, 1927 (which relate to the carrying forward of losses), there may, if that person or a partnership of which he is a member is, by virtue of this section, chargeable under Schedule D for the year 1942—43 in respect of his or their farming, be carried forward to the year 1942—43 and subsequent years of assessment from the years of assessment preceding the year 1942—43 the amount (if any) which would have fallen to be carried forward to those years respectively if that person and every partnership of which he was a member had been charged under Schedule D in respect of his or their farming for all those preceding years and had been given in those preceding years all the relief which he or they could have been given under those sections if he or they had been so charged.

(5) Where on a claim made for the purposes of this subsection within twelve months from the end of the year 1942—43 it is proved that the profits or gains from farming in that year of any individual or partnership of individuals are less than the amount of the profits or gains by reference to which he or they is or are charged by virtue of this section for that year—

(a) that individual or partnership of individuals shall be entitled to such relief from income tax, other than surtax, as will reduce the amount of income tax, other than surtax, payable to the amount which would have been payable if he or they had been charged by reference to the actual profits or gains for that year;

(b) the individual, or, in the case of a partnership of individuals, each of the individuals, shall be entitled to such relief from the surtax, if any, payable by him for that year as will reduce the amount of surtax so payable to the amount which would have been payable if the individual or, as the case may be, the partnership had been charged as aforesaid.

(6) In this section the expression "farming" has the same meaning as in section ten of the Finance Act, 1941.

29. *Exemption from tax of interest on tax reserve certificates and repeal of provisions as to discount.*—(1) Income tax shall not be chargeable for the year 1941—42 or any subsequent year of assessment in respect of the interest on tax reserve certificates issued by the Treasury.

. . . . . .

31. *Exemption from income tax of accumulated interest on certain Ulster, colonial and other savings certificates.*—(1) Subject to the provisions of this section, the accumulated interest payable in respect of such savings certificates as are mentioned in subsection (2) of this section shall be exempt from income tax.

(2) The said savings certificates are such savings certificates issued by the Government of Northern Ireland or of any colony as are declared by regulations made by the Treasury to be certificates the proceeds of the sale of which have been made available to His Majesty's Government in the United Kingdom.

(3) The exemption from income tax provided for by this section shall not extend to the interest on any certificate unless the person beneficially entitled to that certificate when it was issued was then resident—

(a) in the case of a certificate issued by the Government of Northern Ireland, in Northern Ireland;

(b) in the case of a certificate issued in a colony, in that colony or in such neighbouring territory (if any) as may be prescribed in relation to that colony.

(4) If, at the date of the encashment of any such certificates, the total savings certificate holding of the person beneficially entitled to the certificates encashed, computed in the prescribed manner, exceeds the prescribed limit, the said exemption—

(a) shall not extend to the interest on the encashed certificates unless the encashment thereof brings the total savings certificate holding of the said person, computed as aforesaid, below the prescribed limit; and

(b) shall then extend only to the interest on so much of the encashed certificates as is equal to the amount by which the said total holding, so computed, is brought by the encashment below the prescribed limit.

In this subsection the expression "the total savings certificate holding" means, in relation to a person, his total holding of such certificates as are mentioned in subsection (2) of this section and savings certificates issued by the Treasury through the Post Office.

(5) This section shall apply in relation to any protectorate or protected state or any territory in respect of which a mandate from the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom as it applies in relation to a colony; and in this section the expression "prescribed" means prescribed by regulations made by the Treasury.

(6) Nothing in this section shall deprive any person of any exemption from income tax under subsection (2) of section twenty-eight of the Finance Act, 1922 (which exempts from income tax interest on Ulster savings certificates held by a person resident and domiciled in Northern Ireland).

32. *Alteration of certifying authority for the purposes of s.* 18 (1) *of Finance Act*, 1941.—Certificates for the purposes of subsection (1) of section eighteen of the Finance Act, 1941, that arrangements for the concentration of industry or business in the hands of fewer persons are approved by the certifying authority and are in their opinion in the national interest, having regard to the exigencies of the present war, may, after the passing of this Act, be given by or on behalf of any other government department as well as by or on behalf of the Board of Trade, and the said section eighteen (which relates to the treatment for income tax purposes of trades affected by arrangements so

certified) shall have effect accordingly; but no certificate given after the passing of this Act shall have effect for the purposes of the said subsection (1) unless the Treasury concur in the giving of the certificate.

33. *Extension of time for assessments, proceedings, etc. in cases of fraud or wilful default.*—(1) Where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to income tax for the year 1936—37 or any subsequent year of assessment, assessments, additional assessments and surcharges on that person to income tax for that year may, for the purpose of making good to the Crown any loss of tax attributable to the fraud or wilful default, be amended or made at any time, notwithstanding that, apart from this section, the time limited by the relevant enactments for the amendment or making of the assessment, additional assessment or sur-charge has expired.

(2) The time limited by the Income Tax Acts for commencing proceedings for the recovery of any fine or penalty from any person in connection with or in relation to any income tax covered by any assessment (being income tax for the year 1936—37 or any subsequent year of assessment) shall, where any form of fraud or wilful default has been committed by him or on his behalf in connection with or in relation to that tax, be extended so as to authorise the commencement of such proceedings at any time within three years from the final determination of the amount of tax covered by the assessment.

For the purposes of this subsection the amount of the tax covered by any assessment shall not be deemed to be finally determined until that assessment can no longer be varied, whether by any Commissioners on appeal or by the order of any court.

(3) An objection to the amending or making of any assessment, additional assessment or sur-charge to income tax on the ground that the time limited for the amendment or making thereof has expired shall only be made on appeal from the assessment, additional assessment or sur-charge.

(4) Nothing in this section shall extend the time for the bringing of any proceedings against, or the amending or making of any assessments, additional assessments or sur-charges on, the personal representatives of any person by or on whose behalf any form of fraud or wilful default has been committed.

34. *Provisions as to evidence in cases of fraud or wilful default.*—(1) Statements made or documents produced by or on behalf of a person shall not be inadmissible in evidence against him in any such proceedings as are mentioned in subsection (2) of this section by reason only that it has been drawn to his attention that—

(a) in relation to income tax the Commissioners of Inland Revenue may accept pecuniary settlements instead of instituting proceedings;

(b) though no undertaking can be given as to whether or not those Commissioners will accept such a settlement in the case of any particular person, it is the practice of the Commissioners to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party, and has given full facilities for investigation,

and that he was or may have been induced thereby to make the statements or produce the documents.

(2) The proceedings mentioned in subsection (1) of this section are—

(a) any criminal proceedings against the person in question for any form of fraud or wilful default in connection with or in relation to income tax;

(b) any proceedings against him for the recovery of any sum due from him, whether by way of tax or penalty, in connection with or in relation to income tax.

35. *Power to require production of accounts and books.*—(1) Where a person who has been duly required to deliver a statement of the profits or gains arising to him from any trade, profession or vocation fails to deliver the statement, or where the Commissioners of Inland Revenue are not satisfied with the statement delivered by any such person, the Commissioners of Inland Revenue may serve on that person a notice in writing or notices in writing requiring him to do any of the following things, that is to say—

(a) to deliver to the surveyor copies of such accounts (including balance sheets) relating to the trade, profession or vocation as may be specified or described in the notice within such period as may be therein specified, including, where the accounts have been audited, a copy of the auditor's certificate;

(b) to make available, within such time as may be specified in the notice, for inspection by the surveyor or by any officer authorised by the Commissioners of Inland Revenue, all such books, accounts and documents in his possession or power as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade, profession or vocation,

and, if a person on whom any such notice is served fails without reasonable excuse to comply with the requirements of the notice, he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

Where the person on whom the notice is served is a body corporate, that body corporate shall be liable to a penalty when there is any failure to comply with the notice, as well as the secretary or other officer performing the duties of secretary of the body corporate.

(2) The power conferred by section one hundred and thirty-nine of the Income Tax Act, 1918, on commissioners hearing appeals to issue precepts to the appellant ordering the delivery of schedules of particulars shall extend to the issue of precepts requiring the appellant to make available, within the time limited by the precept, for their inspection or that of the surveyor or any officer authorised by the Commissioners of Inland Revenue, all such books, accounts or documents in his possession or power as may be specified or described in the precept, being books, accounts or documents which, in the opinion of the commissioners issuing the precept, contain or may contain information relating to the subject matter of the appeal.

(3) The surveyor or other officer or the commissioners may take copies of, or extracts from, any books, accounts or documents made available for his or their inspection under this section.

. . . . . .

PART V

MISCELLANEOUS AND GENERAL

42. *Assessment and collection of income tax* . . .—The provisions of the Tenth Schedule to this Act shall, until Parliament otherwise determines, have effect for the purpose of simplifying the procedure for the assessment and collection of income tax . . .

. . . . . .

46. *Short title, construction, extent and repeal.*—(1) This Act may be cited as the Finance Act, 1942.

. . . . . .

(4) Part III of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(6) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

. . . . . .

TENTH SCHEDULE

PROVISIONS FOR SIMPLIFYING THE MACHINERY OF ASSESSMENT, *COLLECTION*, ETC.

(Section 42)

PART I

INCOME TAX

1.—(1) The general notices prescribed by section ninety-eight of the Income Tax Act, 1918, requiring the delivery of lists, declarations and statements shall not be given; but any question as to whether a person is liable to assessment in any parish shall be determined as if the foregoing provisions of this paragraph had not been passed and as if such a general notice as aforesaid had been duly given on the first day of the year of assessment.

(2) It shall be the duty of every person who is chargeable to income tax for any year of assessment to give notice to the surveyor that he is so chargeable at or before the end of that year:

Provided that no such notice need be given as respects any year for which he has delivered a statement of his profits and gains in accordance with the provisions of the Income Tax Acts.

(3) If any person without reasonable excuse fails to give such a notice as aforesaid he shall be liable to the like penalties as are applicable under the Income Tax Acts in case of neglect or refusal to deliver a list, declaration or statement which is required by those Acts to be delivered.

2. It shall not be necessary that any certificate of assessment or schedule of arrears should be verified on oath, or that any assessor should appear

before the general commissioners in accordance with subsection (2) of section one hundred and eight of the said Act and make oath as to the matters referred to in that subsection.

3. The assessors shall transmit their certificates of assessment under Schedules A, B and E to the additional commissioners instead of bringing them in to the general commissioners, and the additional commissioners and not the general commissioners shall take them into consideration and sign and allow them, and in the case of additional assessments under Schedules A, B and E, the surveyor shall certify the particulars to the additional commissioners instead of to the general commissioners, and the additional commissioners, and not the general commissioners, shall sign and allow the additional assessments; and references in the said Act to the general commissioners shall be construed accordingly.

4.—(1) Assessments under Schedule D when signed by the additional commissioners shall become effective without being delivered to the general commissioners or allowed and confirmed by them, and so much of any enactment as relates to the delivery of assessments as aforesaid or the allowance and confirmation thereof by the general commissioners shall not have effect; but nothing in this subparagraph affects the right of appeal to the general commissioners or the special commissioners.

(2) Subsection (2) of section twenty-five of the Finance Act, 1926 (which relates to Schedule D assessments under appeal), shall not have effect, and section twenty-four of the Finance Act, 1930 (which provides for the collection of tax not in dispute pending an appeal to the special commissioners), shall apply in relation to appeals against assessments under Schedule D to the general commissioners as it applies in relation to appeals against assessments under that Schedule to the special commissioners, but with the substitution of references to the general commissioners for the references to the special commissioners.

5.—(1) Anything required by the Income Tax Acts to be done by the additional commissioners may be done by one additional commissioner, and one additional commissioner shall be competent to form a meeting of the additional commissioners.

(2) Anything required by the Income Tax Acts to be done by the assessors may be done by one assessor.

(3) Any general commissioner may act as an additional commissioner and references in the Income Tax Acts to additional commissioners shall be construed accordingly.

(4) Any assessment to be made, signed or allowed by the special commissioners may be made, signed or allowed by one special commissioner.

6.—(1) Section one hundred and thirty-four of the Income Tax Act, 1918 (which relates to notices of assessment), shall not have effect with respect to assessments under any Schedule.

(2) Notices of assessments under Schedules D and E shall be served on the persons respectively assessed and those notices may, notwithstanding anything in subsection (2) of section one hundred and twenty-two of the said Act, be served at any time after the signing, or signing and allowing, of the assessment.

(3) The time within which notice of appeal may be given against any assessment under Schedule A or Schedule B shall, in the case of any person who has not been served with a notice of the assessment, be any time before the expiration of twelve months from the end of the year of assessment:

Provided that nothing in this sub-paragraph shall affect the collection or recovery of any tax assessed or charged, but where the assessment is reduced upon appeal, any tax overpaid shall be repaid.

7.—(1) Sections one hundred and fifty, one hundred and fifty-three, one hundred and seventy-five, one hundred and seventy-six and one hundred and ninety-seven of the Income Tax Act, 1918 (which relate respectively to books of assessment, delivery of duplicates of assessments, schedules of deficiencies, discharge and default, schedules of arrears and delivery of duplicates and warrants to collectors in Northern Ireland), shall not have effect and in lieu thereof the following provisions of this paragraph shall have effect.

(2) After any assessments have been signed or signed and allowed the clerk to the commissioners shall [number the pages in each book of assessment and add up the sums on each page, and][1] transmit the books to the surveyor.

(3) The surveyor shall prepare particulars of the sums to be collected and transmit them to the appropriate collector for collection, and references in the Income Tax Acts to duplicates of assessments delivered to collectors shall be construed as including references to particulars so transmitted:[2]

(4) At such times as the Commissioners of Inland Revenue may appoint, the surveyor shall prepare and sign schedules of tax which has been discharged for causes allowed by the Income Tax Acts, and shall transmit them to the Commissioners of Inland Revenue.

(5) Where tax is in arrear, a certificate of the surveyor that tax has been charged and is due, together with a certificate of the collector that payment of the tax has not been made to him, or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown; and any document purporting to be such a certificate as is mentioned in this sub-paragraph shall be deemed to be such a certificate until the contrary is proved.

8.—(1) Every collector appointed by the Commissioners of Inland Revenue, the Treasury or the special commissioners, shall (whatever the terms of the warrant delivered to him on his appointment) be a collector for every parish or district . . . and shall have, in relation to every parish or district . . . all the powers conferred by the Income Tax Acts on the collector, and references in the Income Tax Acts to the collector shall be construed accordingly.[2]

(2) Any tax charged in any parish or district in the United Kingdom may be recovered in any other parish or district in the United Kingdom as if it had been charged in that other parish or district, and section one hundred and sixty-eight of the Income Tax Act, 1918 (which relates to the recovery of tax where a defaulter has removed from or does not reside in the parish where he was assessed), and, in section one hundred and sixty-two of that Act (which relates to distraint by collectors) the words "in accordance with the assessments and warrants delivered to him," shall not have effect:[2]

9.—(1) Collectors in Scotland and Northern Ireland shall, after the passing of this Act, be appointed by the Commissioners of Inland Revenue.

(2) Any collector so appointed, and any collectors holding office at the passing of this Act who were appointed by the Treasury or by the special commissioners, shall hold office during the pleasure of the Commissioners of Inland Revenue.

[1] Words in [ ] apply only to Sched. A assessments: Act of 1944, s. 26 (6), (8).
[2] Provisions relating to City of London repealed, No. 2 Act of 1948, s. 80 and 9th Sched.

10.—(1) Any collector appointed after the passing of this Act by the Commissioners of Inland Revenue shall, on his appointment, receive from those Commissioners a warrant for collecting and levying the tax from time to time charged in any parish or district . . . , including tax due or assessed before the date of the warrant.

(2) Subsection (3) of section thirty-seven of the Finance Act, 1931 (which relates to the warrant to be delivered by the Commissioners of Inland Revenue to collectors appointed by them), shall not have effect in relation to collectors appointed after the passing of this Act.

11. Section one hundred and fifty-six of the Income Tax Act, 1918 (which relates to the collection of assessments under a number or letter), shall not have effect.

12. All clerks to commissioners, all assistants of such clerks, and all assessors, who are in office at the date of the passing of this Act or are appointed thereafter shall, without the necessity for annual re-appointment, continue in office during the pleasure of the commissioners by whom they were appointed, and those commissioners shall make such further appointments to those offices as may from time to time be necessary.

13.—(1) The provisions of this Part of this Schedule shall have effect as respects—

(a) the year 1942—43 and any subsequent year of assessment;

(b) any additional assessments for any previous years signed or signed and allowed after the passing of this Act;

(c) any tax due under any assessment for any previous year which remains unpaid at the date of the passing of this Act.

(2) Where before the passing of this Act—

(a) any certificates of assessments under Schedule A, Schedule B or Schedule E have been delivered to the general commissioners which under this Schedule should have been delivered to the additional commissioners; or

(b) anything has been done by the general commissioners which under the provisions of this Schedule should have been done by the additional commissioners,

the said provisions shall have effect as if the certificates had been delivered to, or, as the case may be, the thing had been done by, the additional commissioners, and the signature by the additional commissioners before the passing of this Act under section one hundred and twenty-two of the Income Tax Act, 1918, of any assessments to which the provisions of this Schedule apply shall be treated as the signature thereof by those commissioners under the provisions of this Schedule.

14. This Part of this Schedule shall be construed as one with the Income Tax Acts.

THE WAR DAMAGE ACT, 1943
(6 & 7 Geo. 6, c. 21)

[3rd June, 1943]

PART I

. . . . . .

2. *Definition of "war damage".*—(1) In this Act the expression "war damage" means—

(a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy;

(b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of such damage as aforesaid;

(c) accidental damage occurring as the direct result—

(i) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy; or

(ii) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,

being, in either case, measures involving a substantial degree of risk to property:

Provided that the measures mentioned in paragraph (c) of this subsection do not include the imposing of restrictions on the display of lights or measures taken for training purposes.

(2) For the purposes of the provisions of this Act relating to payments in respect of war damage under Part I thereof, the War Damage Commission may, with the consent of the Treasury, treat as damage of the kind mentioned in paragraph (b) of the preceding subsection any physical change in land, whether or not being such as to cause depreciation in the value thereof, which is the direct result of measures taken under proper authority to meet the circumstances created by damage occurring as mentioned in paragraph (a) of the preceding subsection.

(3) For the purposes of this section, such action against the enemy as is referred to in paragraph (a) of subsection (1) thereof—

(a) shall, in relation to any ship or aircraft taking part in such action, be deemed to continue until the ship or aircraft has returned to its base;

(b) includes naval, military or air reconnaissances and patrols.

(4) References in the subsequent provisions of this Act to the occurrence of war damage shall be construed as references to the taking of the action or measures specified in this section from which that damage results.

. . . . . .

68. *Power to pay contribution in advance* . . .—(5) Notwithstanding anything in any enactment, the full amount of any interest allowed under this section shall be allowed without deduction of income tax; but the person to whom the interest is allowed shall be assessed and charged to income tax under Case III of Schedule D on the full amount of the interest.

PART III

. . . . . .

113. *Certain expenses not to be a deduction for income tax . . .*—No sum shall be deducted in computing the amount of the profits or gains of any person for any purpose of the Income Tax Acts . . ., and no sum shall be included in computing—

(a) the expenses of management of any person in respect of which relief may be claimed under section thirty-three of the Income Tax Act, 1918; or

(b) the cost to any person of maintenance, repairs, insurance and management in respect of which relief may be claimed under Rule 8 of No. V of Schedule A; or

(c) the cost to any person of management or supervision in respect of which relief may be claimed under section twenty-six of the Finance Act, 1922,

in respect of—

(i) any payment made in or towards the discharge of any liability imposed on him under Part I of this Act as, or as a mortgagee of, a direct or indirect contributor;

(ii) any premium payable under a policy issued under either of the schemes operated under Part II of this Act; or

(iii) any expenditure on repairing or otherwise making good war damage in so far as he is entitled to a payment in respect of the damage by virtue of the provisions of this Act or by virtue of a policy issued under either of the said schemes.

. . . . . .

THE FINANCE ACT, 1943

(6 & 7 GEO. 6, c. 28)

[22nd July, 1943]

. . . . . .

PART II

INCOME TAX

13. *Income tax for* 1943—44.—(1) Income tax for the year 1943—44 shall be charged at the standard rate of ten shillings in the pound, and, in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1942—43, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1943—44.

14. *Higher rates of income tax for* 1942—43.—Income tax for the year 1942—43 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard

rate for the year 1942—43 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

15. *Relief where a person is employed or maintained to take charge of children.*—(1) Subject to the provisions of this section, if an individual proves, in the case of a year of assessment,—

(a) that he is entitled to relief under section twenty-one of the Finance Act, 1920, in respect of a child resident with him; and

(b) that a female person is resident with and maintained or employed by him for the purpose of having the charge and care of the child; and

(c) that neither he nor any other individual is entitled under sections nineteen to twenty-two of that Act to a deduction of tax in respect of the person so employed or maintained or, if he or any other individual is so entitled, that the claim thereto has been relinquished; and

(d) that he is not entitled under section nineteen or section twenty of that Act to a deduction of tax in respect of any other person,

he shall be entitled to a deduction from the amount of tax with which he is chargeable for that year equal to tax at the standard rate on fifty pounds.

(2) Not more than one deduction of tax shall be allowed under this section to any claimant for any year.

(3) No relief shall be given under this section to a male claimant for any year if he is entitled for that year to the higher of the two allowances provided for by subsection (1) of section eighteen of the Finance Act, 1920 (that is to say, the allowance provided for certain married persons) unless throughout that year his wife was totally incapacitated by physical or mental infirmity, or to a female claimant unless throughout that year she was either incapacitated as aforesaid or in full-time employment or engaged full-time in some trade, profession or vocation.

(4) Where more than one individual is entitled to relief under this section in connection with the same child, the fifty pounds mentioned in subsection (1) of this section shall be apportioned between them in such proportions as may be agreed between them or, in default of agreement, in accordance with such apportionment as may be adopted in relation to that child under section twenty-four of the Finance Act, 1940, for the purposes of the children relief.

An apportionment may be made under this section notwithstanding that relief has already been allowed thereunder to any individual, and if it appears as a result of the apportionment that the individual has been allowed too much relief, the amount of the excess may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from him accordingly.

(5) Section twenty-four of the Finance Act, 1920 (which relates to relief to individuals not resident in the United Kingdom) shall have effect as if the relief conferred by this section had been conferred by a provision of Part II of that Act.

(6) All such provisions of the Income Tax Acts as apply in relation to deductions of tax under section forty of the Finance Act, 1927, shall, with any necessary modifications, apply in relation to deductions of tax under this section.

16. *Increase of allowances for dependent relatives.*—(1) Subsection (1) of section twenty-two of the Finance Act, 1920 (which, as amended by subsection (3) of section forty-one, and the Fifth Schedule to, the Finance

Act, 1927, provides for a deduction of tax on twenty-five pounds in the case of a claimant who maintains at his own expense a person whose total income from all sources does not exceed fifty pounds a year, being either an aged or infirm relative of his or his wife's, or his or his wife's widowed mother, and for a like deduction in the case of a claimant who, by reason of old age or infirmity, is compelled to depend on the services of a daughter resident with and maintained by him) shall, except in relation to a claim made on the ground that the claimant is dependent on the services of a daughter, have effect with the substitution—

(a) for the words "fifty pounds" of the words "eighty pounds"; and

(b) for the words "to a deduction of twenty-five pounds in respect of each person whom he so maintains" of the words "in respect of each person whom he so maintains to a deduction of fifty pounds reduced, if the total income from all sources of that person exceeds thirty pounds a year, by the amount of the excess."

. . . . . .

(3) A claimant shall not, by reason of the coming into operation of this section, be entitled to less relief from income tax than that to which he would otherwise be entitled.

. . . . . .

18. *Exemption from tax of foreign service allowances to Crown servants.*—Where any allowance to any person in the service of the Crown is certified by the Treasury to represent compensation for the extra cost of having to live outside the United Kingdom in order to perform his duties, that allowance shall not be regarded as income for any of the purposes of the Income Tax Acts.

19. *Post-war credits to members of forces and special constables, &c.*—The sums known as post-war credits paid either—

(a) under any Order in Council, Royal Warrant or King's Order to members of the armed forces of the Crown or of the Voluntary Aid Detachments; or

(b) under arrangements certified by the Treasury to be arrangements providing similar benefits to—

(i) special constables appointed under the Special Constables Act, 1831, or section one hundred and ninety-six of the Municipal Corporations Act, 1882, or under section ninety-six of the Burgh Police (Scotland) Act, 1892, as amended or extended by any subsequent enactment or any similar provision contained in a local Act, or members of the Police War Reserve, the Women's Auxiliary Police Corps or the Police Auxiliary Messenger Service; or

(ii) members of the National Fire Service; or

(iii) members of the Civil Defence Reserve or the civil defence ambulance, decontamination, first-aid party, first-aid post, messenger, report and control, rescue or wardens' services; or

(iv) members of the fireguard service; or

(v) members of the Royal Observer Corps; or

(vi) persons in Northern Ireland similar to any of the persons specified in any of the preceding sub-paragraphs,

shall not be regarded as income for any of the purposes of the Income Tax Acts for any year of assessment, including a year of assessment before the year 1943—44.

20. *Application of certain enactments to settlements and dispositions where there is more than one settlor or disponer.*—For the removal of doubts, it is hereby declared that the provisions of Part IV of the Finance Act, 1938, and section twenty-one of the Finance Act, 1936 (which relate to the income tax to be paid in the case of certain settlements) and the provisions of section twenty of the Finance Act, 1922 (which relates to certain revocable and other dispositions) have effect in accordance with the provisions of the Sixth Schedule to this Act in the case of any settlement or disposition where there is more than one settlor or more than one person who made the disposition.

. . . . . .

PART IV

MISCELLANEOUS

. . . . . .

31. *Short title, construction, extent and repeal.*—(1) This Act may be cited as the Finance Act, 1943.

. . . . . .

(3) Part II of this Act shall be construed as one with the Income Tax Acts.

. . . . . .

(5) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

. . . . . .

SIXTH SCHEDULE

APPLICATION OF ENACTMENTS TO SETTLEMENTS AND DISPOSITIONS WHERE THERE IS MORE THAN ONE SETTLOR OR PERSON WHO MADE THE DISPOSITION.

(Section 20)

PART I

Application of Part IV of the Finance Act, 1938

1. Subject to the provisions of this Part of this Schedule, Part IV of the Finance Act, 1938, has effect in relation to each settlor as if he were the only settlor.

2. References in the said Part IV to the property comprised in the settlement include, in relation to any settlor, only property originating from that settlor and references in the said Part IV to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.

3. In considering for the purposes of the said Part IV, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.

4. The references in subsection (1) of section thirty-eight and in section thirty-nine to sums payable by virtue of or in consequence of any provision of the settlement or sums paid by virtue of or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.

5.—(1) References in this Part of this Schedule to property originating from a settlor are references to—

(a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and

(b) property representing that property; and

(c) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.

(2) References in this Part of this Schedule to income originating from a settlor are references to—

(a) income from property originating from that settlor; and

(b) so much of any such income of a body corporate as is mentioned in sub-paragraph (ii) of paragraph (a) of subsection (4) of section forty-one of the Finance Act, 1938, as corresponds to property originating from the settlor which is comprised in the settlement; and

(c) income provided directly or indirectly by that settlor.

(3) In this paragraph—

(a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person;

(b) references to property which represents other property include references to property which represents accumulated income from that other property.

PART II

Application of Finance Act, 1936, s. 21

1. Subject to the provisions of this Part of this Schedule, section twenty-one of the Finance Act, 1936, has effect in relation to each settlor as if he were the only settlor.

2. For the purposes of the said section twenty-one, only the following can be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say,—

(a) income originating from that settlor; and

(b) in a case in which paragraph (b) of subsection (3) of the said section twenty-one applies, any sums which are under that paragraph to be deemed to be paid as income:

Provided that in applying the said paragraph (b) to any settlor—

(i) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor; and

(ii) the reference to the income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in subsection (3) of the said section includes only income originating from that settlor.

3. The references in this Part of this Schedule to income originating, and property originating, from a settlor have the meanings assigned to them by

paragraph 5 of Part I of this Schedule, except that paragraph (b) of sub-paragraph (2) of the said paragraph 5 must be treated as omitted.

PART III

Application of Finance Act, 1922, s. 20

1. Subject to the provisions of this Part of this Schedule, section twenty of the Finance Act, 1922, has effect in relation to each person who has made the disposition as if he were the only person who had made it.

2. References in the said section twenty to income payable or applicable by virtue or in consequence of the disposition include, in relation to any person making the disposition, only—

(a) income from property which that person has provided directly or indirectly for the purposes of the disposition; and
(b) income from property representing that property; and
(c) income from so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided; and
(d) income provided directly or indirectly by that person.

3. In this Part of this Schedule, references to property which represents other property include references to property which represents accumulated income from that other property.

. . . . . .

THE INCOME TAX (EMPLOYMENTS) ACT, 1943[1]
(6 & 7 GEO. 6, c. 45)

An Act to amend the law relating to income tax in respect of certain emoluments.
[11th November, 1943]

1. *Basis of charge and method of collection of income tax on certain emoluments.*—(1) Income tax for the year 1944—45 or any subsequent year of assessment shall be assessed and charged in respect of the emoluments specified in subsection (2) of this section on the amount of those emoluments for the year; and, on the making of any payment of, or on account of, any such emoluments made during the year 1944—45 or any subsequent year of assessment, income tax shall, subject to and in accordance with the regulations made by the Commissioners of Inland Revenue under section two of this Act, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the emoluments.

(2) *The said emoluments (hereinafter in this Act referred to as "emoluments to which this Act applies") are all emoluments assessable to income tax under Schedule E, other than pay, pensions or other emoluments payable in respect of service in or with the armed forces of the Crown.*

. . . . . .

(b) Rule 2 of the Rules applicable to Cases I and II of Schedule D (which provides for the half-yearly assessment of certain weekly wage-earners)

[1] As amended by the Income Tax (Offices and Employments) Act, 1944, s. 9 (4) and Sched.

shall not have effect as respects tax for the year 1944—45 or any subsequent year of assessment; . . .

2. *Regulations of Commissioners of Inland Revenue.*[2]—(1) The Commissioners of Inland Revenue shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Act applies, being tax for the year 1944—45 or any subsequent year of assessment, and those regulations may, in particular, include provision—

(a) for requiring any person making any payment of, or on account of, any such emoluments, when he makes the payment, to make a deduction or repayment of tax calculated by reference to tax tables prepared by the Commissioners of Inland Revenue and for rendering persons who are required to make any such deduction or repayment accountable to, or, as the case may be, entitled to repayment from, those Commissioners;

(b) for the production to and inspection by persons authorised by those Commissioners of wages sheets and other documents and records for the purpose of satisfying themselves that tax has been and is being deducted, repaid and accounted for in accordance with the regulations;

(c) for the collection and recovery, whether by deduction from emoluments paid in any later year or otherwise, of tax in respect of emoluments to which this Act applies which has not been deducted or otherwise recovered during the year;

(d) for the assessment and charge of tax by the surveyor in respect of emoluments to which this Act applies;

(e) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal,

and any such regulations shall have effect notwithstanding anything in the Income Tax Acts:

Provided that the said regulations shall not affect any right of appeal to the General or other Commissioners which a person would have apart from the regulations.

(2) The said tax tables shall be constructed with a view to securing that, so far as possible,—

(a) the total tax payable in respect of any emoluments for any year of assessment is deducted from the emoluments paid during that year; and

(b) the tax deductible or repayable on the occasion of any payment of, or on account of, emoluments is such that the total net tax deducted since the beginning of the year of assessment bears to the total tax payable for the year the same proportion that the part of the year which ends with the date of the payment bears to the whole year.

In this subsection the references to the total tax payable for the year shall be construed as references to the total tax, other than surtax, estimated to be payable for the year in respect of the emoluments, subject to a provisional deduction for allowances and reliefs and subject also, if necessary, to an adjustment for amounts overpaid or remaining unpaid on account of income tax in respect of emoluments to which this Act applies for any previous year (including any year previous to the year 1944—45).

For the purpose of estimating the total tax payable as aforesaid, it may

[2] See also Offices, etc. Act, 1944, s. 3, below, p. 683.

be assumed, in relation to any payment of, or on account of, emoluments, that the emoluments paid in the part of the year of assessment which ends with the making of the payment will bear to the emoluments for the whole of that year the same proportion that that part of the year bears to the whole year.

(3) If any person fails to comply with any provision of the said regulations requiring him to furnish a return or other information or to give any certificate or to produce wages sheets or other documents or records, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(4) All regulations of the Commissioners of Inland Revenue under this section shall be laid before the Commons House of Parliament as soon as may be after the making thereof, and if that House within twenty-eight days from the date on which any such regulations are laid before it resolves that the regulations be annulled, the regulations shall thereupon cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

In reckoning any such period of twenty-eight days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the Commons House is adjourned for more than four days.

3. *Transitional provisions.*— . . .

(5) Where any tax is discharged under the provisions of this section, the amount, if any, to be credited for the year under section seven of the Finance Act, 1941 (which relates to post-war credits) shall be computed as follows:—

(a) the said amount shall first be computed as if the tax discharged had been duly paid;

(b) the tax discharged shall then be deducted.

4. *Interpretation.*—In this Act except where the context otherwise requires the following expressions have the meanings hereby respectively assigned to them (that is to say):—

"employment" means an employment the emoluments of which are assessable to income tax under Schedule E;

. . . . . .

"service in or with the armed forces of the Crown" means—

(a) service in the armed forces of the Crown;

(b) in the case of a woman, service in any of the capacities mentioned in the Schedule to the National Service (No. 2) Act, 1941 (which defines, in relation to women, the exemption from the liability to be called up which corresponds to the exemption for men already serving in the armed forces);

(c) such other service, if any, in connection with the armed forces of the Crown as may be prescribed by regulations to be made by the Commissioners of Inland Revenue.

5. *Short title, construction and repeal.*—(1) This Act may be cited as the Income Tax (Employments) Act, 1943.

(2) This Act shall be construed as one with the Income Tax Acts.

(3) The enactments[1] set out in the Third Schedule to this Act are hereby

[1] These are mainly if not wholly related to the assessment, etc., of "weekly wage earners," and are indicated in the relevant places.

repealed to the extent mentioned in the third column of that Schedule except as respects tax for the year 1943—44 or any previous year of assessment:

Provided that the repeal, by virtue of this subsection, of subsection (2) of section one hundred and sixty-nine of the Income Tax Act, 1918, shall not affect the operation of section twenty-nine of the Finance Act, 1921, as applied by section thirty of the Finance Act, 1924.

THE INCOME TAX (OFFICES AND EMPLOYMENTS) ACT, 1944
(7 & 8 GEO. 6, c. 12)

[1st March, 1944]

1. *Extension of principal Act (subject to exceptions) to all emoluments taxable under Schedule E.*—(1) Subject to the provisions of this Act, the Income Tax (Employments) Act, 1943 (hereafter in this Act referred to as "the principal Act"), shall extend to all emoluments assessable to income tax under Schedule E, other than pay, pensions or other emoluments payable in respect of service in or with the armed forces of the Crown, and accordingly that Act shall have effect as if for subsections (2) to (4) of section one thereof there were substituted the following subsection—[1]

. . . . . .

(2) Notwithstanding anything in the preceding subsection, subsection (7) of section three of the principal Act shall not empower the Commissioners of Inland Revenue to make any regulations which they would not have had power to make if this Act had not passed.

2. *Transfer of certain annuities to Schedule E.*—(1) Subsection (2) of section thirty-two of the Finance Act, 1921 (which provides that income tax chargeable in respect of annuities paid out of certain superannuation funds to persons residing in the United Kingdom may be charged under Case VI of Schedule D instead of being deducted and accounted for under Rule 21 of the General Rules), shall, as respects the year 1944—45 and all subsequent years of assessment, have effect as if for the words "Case VI of Schedule D" there were substituted the words "Schedule E":

Provided that sections twenty-five and twenty-six of the Finance Act, 1941 (which relate to tax-free payments), shall continue to have effect as if the substitution made by this subsection had not been made.

(2) References in this Act to emoluments assessable to income tax under Schedule E shall, as well in relation to years of assessment before the year 1944—45 as in relation to that and subsequent years, be construed as including references to the said annuities.

3. *Deductions and repayments of tax.*—(1) Regulations made under section two of the principal Act may provide, as respects the year 1944—45 or any subsequent year of assessment, for the deduction of tax at the standard rate in such cases or classes of cases as may be provided for by the regulations.

(2) Where, during the year 1944—45 or any subsequent year of assessment, any payment of, or on account of, any emoluments to which the principal Act applies is made, tax for that year shall be deducted or repaid on the making of that payment notwithstanding that the emoluments are in whole

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[1] See Employments Act, 1943, s. 1 (3), above, p. 690.

or in part emoluments for some other year, including a year before the year 1944—45.

. . . . . .

5. *Service in or with the armed forces of the Crown.*—(1) If, in the case of the year 1944—45 or any subsequent year of assessment, it appears that the income tax payable by a person in respect of any pay, pension or other emoluments payable in respect of service in or with the armed forces of the Crown has been computed by reference to the amount thereof for the previous year of assessment and that the actual amount thereof for the year is less than the amount thereof for the previous year, that person shall be entitled to such relief from income tax (including surtax) as will reduce the amount payable by him to the amount which would have been payable if the tax had been computed by reference to the actual amount of the pay, pension or other emoluments for the year instead of by reference to the amount thereof for the previous year.

(2) Subsection (4) of section three of the principal Act (which provides that there shall be no discharge of tax under that section in respect of any emoluments unless the person entitled thereto is at some time during the relevant period in the year 1944—45 in receipt of emoluments to which that Act applies, and for a proportionate reduction of the amount to be discharged if he is in receipt of such emoluments for a part only of that period) shall have effect as if any pay, pension or other emoluments in respect of service in or with the armed forces of the Crown which the person in question is in receipt of during the relevant period were emoluments to which the principal Act applies.

. . . . . .

9. *Short title, interpretation, construction and repeals.*—(1) This act may be cited as the Income Tax (Offices and Employments) Act, 1944.

(2) In this Act the expression "service in or with the armed forces of the Crown" has the same meaning as it has for the purposes of the principal Act.

(3) This Act shall be construed as one with the Income Tax Acts.

. . . . . .

THE FINANCE ACT, 1944
(7 & 8 Geo. 6, c. 23)

[13th July, 1944]

. . . . . .

PART III—INCOME TAX (CHARGE OF TAX AND MISCELLANEOUS)

19. *Income tax for* 1944—45.—(1) Income tax for the year 1944—45 shall be charged at the standard rate of ten shillings in the pound, and in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.[1]

(2) Subject to the provisions of the Income Tax (Employments) Act, 1943, and the Income Tax (Offices and Employments) Act, 1944, all such enactments as had effect with respect to the income tax charged for the year 1943—44, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1944—45

[1] See Finance Act, 1945, s. 4, p. 695.

20. *Higher rates of income tax for* 1943—44.—Income tax for the year 1943—44 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the year 1943—44 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

. . . . . .

23. *Amendment of s.* 24 *of Finance Act*, 1920.—(1) For the purposes of the proviso to subsection (1) of section twenty-four of the Finance Act, 1920 (which provides for the granting of reliefs from income tax to certain individuals not resident in the United Kingdom, subject to certain limitations on the amount of the relief) Dominion income tax relief shall be left out of account in computing—

(a) the amount of the income tax payable by an individual; and

(b) the amount which would be payable by him by way of income tax if the tax were chargeable on his total income from all sources, including income which is not subject to income tax charged in the United Kingdom.

(2) In this section the expression "Dominion income tax relief" means the relief provided for by section twenty-seven of the Finance Act, 1920.

24. *Sale of copyrights for lump sum.*—(1) Where—

(a) the author of a literary, dramatic, musical or artistic work assigns the copyright therein wholly or partially or grants any interest in the copyright by licence; and

(b) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment; and

(c) the author was engaged on the making of the work for a period of more than twelve months,

he shall be entitled to claim that effect shall be given to the subsequent provisions of this section in connection with that payment.

(2) If the period for which he was engaged on the making of the work does not exceed twenty-four months, then, for all the purposes of the Income Tax Acts, one half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable twelve months before that date.

(3) If the period for which he was engaged on the making of the work exceeds twenty-four months, then, for all the purposes of the Income Tax Acts, one third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one third shall be treated as having become receivable twelve months, and one third twenty-four months, before that date.

(4) A claim under subsection (1) of this section must be made to the Commissioners of Inland Revenue not later than twelve months from the end of the year of assessment mentioned in that subsection, and section nineteen of the Finance Act, 1925 (which relates to the making and allowing of claims for certain reliefs and to rights of appeal), shall apply in relation to claims under the said subsection (1) as it applies in relation to the claims mentioned in that section.

(5) Where, on a claim made under this section, liability to tax falls to be adjusted in accordance with subsection (2) or subsection (3) of this section,

such additional assessment, reductions of assessments and repayments shall be made as are necessary to give effect to the provisions of this section.

(6) In this section, the expression "author" includes a joint author, and the expression "lump sum payment" includes an advance on account of royalties which is not returnable.

25. *Maintenance orders.*—(1) In this section, the expression "small maintenance payments" means payments under an order made by a court in the United Kingdom—

(a) to or for the benefit of a woman for her maintenance; or

(b) to any person for the benefit of, or for the maintenance or education of, a person under sixteen years of age,

being payments which—

(i) are for the time being required by the order (whether as originally made or as varied) to be made weekly at a rate not exceeding two pounds a week in the first-mentioned case and not exceeding one pound a week in the last-mentioned case; and

(ii) would, apart from this section, fall within Rule 19 or Rule 21 of the General Rules (which provide for the deduction of tax from interest, annuities and other annual payments);

and the expression "small maintenance order" means an order providing for the making of small maintenance payments.

(2) Notwithstanding anything in Rule 19 or Rule 21 of the General Rules, the following payments shall be made without deduction of tax, that is to say,—

(a) any small maintenance payment under an order made after the passing of this Act; and

(b) any small maintenance payment falling due after the fifth day of April, nineteen hundred and forty-five, under an order made before the passing of this Act.

(3) Any sums paid in or towards the discharge of payments required by this section to be made without deduction of tax shall be chargeable under Case III of Schedule D as if they were mentioned in Rule 1 of the Rules applicable to that Case, but the tax shall be computed in all cases on the payments falling due in the year of assessment, so far as paid in that or in any other year.

(4) A claimant shall be entitled, in computing his total income for any year of assessment for any of the purposes of the Income Tax Acts, to deduct sums paid by him in or towards the discharge of any such small maintenance payments required by this section to be made without deduction of tax as fall due in that year, and effect shall be given to this deduction by reducing any assessment made on him or by repayment, as the case may require; and for the purposes of section seventeen of the Income Tax Act, 1918 (which provides that relief is not to be given in respect of charges on income) any amount which can be deducted under this subsection in computing the total income of a person shall be treated as if it were income the tax on which that person is entitled to charge against another person.

(5) Where a court—

(a) make a small maintenance order; or

(b) vary an order so that it becomes or ceases to be a small maintenance order; or

(c) change the persons who are entitled to small maintenance payments;

the court shall furnish to the Commissioners of Inland Revenue, in such form as those Commissioners may prescribe, particulars of the order or variation, as the case may be, the names of the persons affected by the order and, so far as known to the court, the addresses of those persons.

(6) In this section, the expression "persons affected," in relation to a small maintenance order, means the person liable to make the payments under the order and any person for the time being entitled to the payments, references to the making of an order include references to the revival of an order, and references to the variation of an order include references to the making of an order changing the persons entitled to the payments thereunder.

26. *Simplification of procedure.*—(1) The provisions of this section shall have effect as respects—

(a) the year 1945—46 and subsequent years of assessment; and

(b) any additional assessment for the year 1944—45 or any previous year signed or signed and allowed after the fifth day of April, nineteen hundred and forty-five.

[*Subss.* (2)—(4), (6) *amend ss.* 118, 122 (1) *of the Act of* 1918 *and para.* 7 *of Part I of the* 10*th Sched. to the Act of* 1942.]

(5) All notices of assessment under Schedules B and D shall be prepared and issued by the surveyor.

. . . . . .

PART IV—INCOME TAX (EXPENDITURE ON SCIENTIFIC RESEARCH).

27. *Allowances for expenditure on scientific research not of a capital nature and on payments to research associations, universities, &c.*[2]—Notwithstanding anything in Rule 3 of the Rules applicable to Cases I and II of Schedule D, where, after the appointed day, a person carrying on a trade—

(a) incurs expenditure not of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf; or

(b) pays any sum to any scientific research association for the time being approved for the purposes of this section by the appropriate Research Council or Committee being an association which has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs; or

(c) pays any sum to be used for such scientific research as is mentioned in the last preceding paragraph to any such university, college, research institute or other similar institution as is for the time being approved for the purposes of this section by the appropriate Research Council or Committee,

the expenditure incurred or sum paid, as the case may be, may be deducted as an expense in computing the profits or gains of the trade for the purposes of income tax.

28. *Allowances for capital expenditure on scientific research.*[2]—(1) Subject to the provisions of the next succeeding section, where, after the appointed day, a person—

(a) while carrying on a trade, incurs expenditure of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf; or

(b) incurs expenditure of a capital nature on scientific research directly undertaken by him or on his behalf and thereafter sets up and commences a trade connected with that research,

[1] See Income Tax Act, 1945, s. 44. [2] See Income Tax Act, 1945, ss. 45, 66 (5).

a deduction equal to one fifth of the expenditure shall be allowed in charging the profits or gains of the trade for each of the five years of assessment mentioned in the succeeding provisions of this section.

(2) If the expenditure is incurred before the end of the year of assessment in which the trade was set up and commenced, the five years shall be that and the next four years of assessment.

(3) If the expenditure is incurred after the end of the year of assessment in which the trade was set up and commenced but not later than twelve months from the setting up and commencement of the trade, the five years shall be the year of assessment next following that in which the trade was set up and commenced and the next four years of assessment.

(4) If the expenditure is incurred after twelve months from the setting up and commencement of the trade, and during the basis year for any year of assessment, the five years shall be that and the next four years of assessment:

Provided that—

(a) where two basis years overlap, any expenditure incurred in the period common to both shall be deemed for the purposes of this subsection to have been incurred in the first basis year only; and

(b) where there is an interval between the end of the basis year for one year of assessment and the beginning of the basis year for the next year of assessment, any expenditure incurred during the interval shall be deemed for the purposes of this subsection to have been incurred in the second basis year; and

(c) any expenditure which is incurred before the end of, but after the end of the basis year for, the last complete year of assessment before the permanent discontinuance of the trade shall be deemed for the purposes of this subsection to have been incurred in the said basis year.

In this subsection, the expression "basis year" means, in relation to a year of assessment, the period the profits or gains of which are, under section thirty-four of the Finance Act, 1926, to be taken to be the profits or gains of the year preceding that year of assessment

20. *Provisions as to assets representing capital expenditure.*[6]—(1) Where an asset representing scientific research expenditure of a capital nature incurred by the person carrying on a trade ceases to be used by that person for scientific research related to that trade—

(a) no allowance shall be made under the last preceding section for any year of assessment after that in which the cessation takes place; and

(b) if the amounts, if any, allowed under the last preceding section in respect of the expenditure, added to the value of the asset immediately before the cessation, are less than the said expenditure, there shall be allowed in charging the profits and gains of the trade for the year of assessment in which the cessation takes place an additional deduction equal to the difference; and

(c) if in any subsequent year of assessment a claim is, or would but for this subsection be, admissible by the person carrying on the trade to a deduction in respect of the asset for wear and tear, obsolescence, depreciation or exceptional depreciation and the amount of that deduction is dependent upon the actual cost to that person of the asset, the cost of the asset, or the net cost of the asset, then the actual cost, cost or net cost, as the case may be, shall, for the purpose of ascertaining whether any and if so what deduction is

[6] See Income Tax Act, 1945, ss. 45, 60, 80, 69 (3).

admissible, be treated as reduced by the amount of any deductions allowed in respect of the asset under this or the last preceding section.

(2) Where an asset representing scientific research expenditure of a capital nature in respect of which an allowance or allowances has or have been made under this or the last preceding section in charging the profits or gains of a trade ceases to be used by the person carrying on the trade for scientific research related to that trade and is then or thereafter sold by him without having been used in the meantime for other purposes, then—

(a) if an additional allowance, or a greater additional allowance, would have been made under the last preceding subsection for the year of assessment in which the cessation occurred if the proceeds of sale of the asset had been taken to be the value of the asset, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be allowed in charging the profits or gains of the trade for the year of assessment in which the sale occurs or, if the sale occurs on or after the date on which the trade is permanently discontinued, for the last year of assessment in which the trade is carried on before the discontinuance;

(b) in any other case, if the proceeds of sale plus the total amount of the allowances made under this and the last preceding section in respect of the expenditure exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a trading receipt of the trade accruing at the time of the sale, or, if the sale occurs on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.

(3) Where an asset is destroyed . . ., it shall for the purposes of the last preceding subsection be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade in respect of the destruction and any moneys received by him for the remains of the asset shall be treated as if they were proceeds of that sale.

(4) Where a deduction is allowed for any year under this or the last preceding section in respect of expenditure represented wholly or partly by any assets, no deduction shall be allowed under any provision of the Income Tax Acts other than this Part of this Act in respect of wear and tear, obsolescence, depreciation or exceptional depreciation of those assets for any year of assessment during any part of which they are used by the person carrying on the trade for scientific research related to the trade.

20. *Carrying forward of allowances.*—Paragraph (3) of Rule 6 of the Rules applicable to Cases I and II of Schedule D (which relates to the carrying forward of deductions allowable in respect of wear and tear) and section nineteen of the Finance Act, 1932 (which provides for the carrying forward of losses for which relief cannot be given owing to the grant of relief given in respect of wear and tear) shall apply in relation to deductions allowable under either of the two last preceding sections as they apply in relation to deductions allowable in respect of wear and tear.

21. *Supplementary provisions.*—(1) In this Part of this Act, the following expressions have the meanings hereby respectively assigned to them, that is to say,—

[" *the appointed day* " *means April 6th*, 1946; *see No.* 2 *Act of* 1945, *s.* 18.]

which is payable to a custodian, the Special Commissioners, on any information before them, are of opinion that any income (not being income to which the preceding paragraphs of this Part of this Schedule apply) would, if notice to make a return were served on that individual, fall to be included in his total income for surtax purposes, they may, without any notice to make a return being served on him or any notice of assessment, make an assessment to surtax upon that individual in respect of that income.

Payment of tax by custodian

5. A custodian shall, save as expressly provided in this Part of this Schedule, pay or cause to be paid, out of money in his hands to which some other person would be entitled but for the operation of the law relating to trading with the enemy, any income tax (including surtax) assessed on a custodian by virtue of paragraph 1 or paragraph 3 of this Part of this Schedule, which, but for the operation of that law, would have been chargeable on or borne by that other person.

6.—(1) A custodian shall, on demand of the Commissioners of Inland Revenue as respects tax other than surtax, and on demand of the Special Commissioners as respects surtax, pay or cause to be paid, out of money in his hands to which some other person would be entitled but for the operation of the law relating to trading with the enemy, any sum stated in the demand to be due from that person in respect of income tax other than surtax, or in respect of surtax, as the case may be, for whatever year of assessment (including years before the year 1939—40).

(2) Any sum paid by a custodian in pursuance of such a demand shall be deemed for the purposes of the Income Tax Acts to have been paid by the person who is stated in the demand to be the person from whom it is due.

(3) A sum may be included in any such demand as aforesaid notwithstanding that the relevant assessment is, or is still capable of being, the subject of an appeal.

Effect o release of property or income by custodian

7. Where a custodian releases to or for the benefit of, or to the personal representatives of, any person who has ceased to be an enemy or has died everything in the custodian's hands to which that person or his personal representatives, as the case may be, would, but for the operation of the law relating to trading with the enemy, be entitled—

(a) any income which, but for the operation of that law, would have belonged to that person or to some person under whom he claims, shall thereafter be treated for all the purposes of the Income Tax Acts as having been income of the person whose income it would have been for those purposes but for the operation of the said law;

(b) all income tax (including surtax) paid by deduction or otherwise by a custodian in respect of any such income shall thereafter be treated as having been paid by, and all reliefs allowed to a custodian in respect of any such income shall thereafter be treated as having been allowed to, the last-mentioned person; and

(c) appeals may thereafter be brought by the last-mentioned person or his personal representatives against any assessment (including any assessment to surtax) made on a custodian in respect of any such income as if the assessment had been made on him.

8. Where an assessment is made under any of the preceding provisions of this Part of this Schedule on a custodian and, whether before or after the making of the assessment, the income or any part thereof is paid,

transferred or released, or permitted to be paid or transferred, to any other person by the custodian, so much, if any, of the tax payable by virtue of the assessment as cannot, under the preceding provisions of this Part of this Schedule, be paid by the custodian shall be a debt due to the Crown—

(a) in a case to which the last preceding paragraph applies, from the person whose income it is, under that paragraph, treated as having been, or his personal representatives; and

(b) in any other case, from the person to whom the income is so paid, transferred or released,

and may be recovered accordingly, and the custodian shall cease to be liable in respect of the tax.

Relaxation of time limits

9. Notwithstanding anything in the Income Tax Acts limiting the time for making assessments, assessments may be made under paragraphs 1, 3 and 4 of this Part of this Schedule at any time before such date as Parliament may hereafter determine, and any appeal against any such assessment, and any claim made either by a custodian or by virtue of paragraph 7 of this Part of this Schedule to relief from tax, may, notwithstanding anything in the Income Tax Acts restricting the time for bringing appeals or making claims for relief, be brought or made at any time before the said date.

Supplementary

10. For the purposes of paragraphs 1 to 4 of this Part of this Schedule it shall, except so far as the contrary is proved, be assumed that nothing has occurred since the third day of September, nineteen hundred and thirty-nine, to change the persons who, but for the operation of the law relating to trading with the enemy, would be entitled to any money or property, or to income therefrom, and any assessment under paragraph 1 or paragraph 3 of this Part of this Schedule shall specify the person who has been taken to be the person who, but for the operation of the said law, would have been entitled to the relevant income.

11. Where income from any source for any year of assessment would become payable to a custodian but for the fact that no income from that source is available for payment in that year, but, apart from the operation of the law relating to trading with the enemy, income tax would nevertheless be chargeable in respect of income from that source for that year, the provisions of this Part of this Schedule shall have effect as if income from that source had been available for payment in that year and become payable to the custodian.

12. In this Part of this Schedule, the expression "income" means income for the purposes of the Income Tax Acts:

Provided that the said expression includes any rents, profits or other sums arising from any land, and any tax under Schedule A or Schedule B in respect of any land shall be treated as tax in respect of income from that land.

Years to which this Part of this Schedule applies

13. This Part of this Schedule shall have effect with respect to income tax (including surtax) for the year 1939—40 and subsequent years of assessment and, to the extent expressly provided by paragraph 6 of this Part of this Schedule, with respect also to income tax (including surtax) for previous years of assessment.

PART IV—GENERAL

1.—(1) Any custodian and any person who holds any property to the order of any custodian, on being requested in writing by the Commissioners of Inland Revenue or the Special Commissioners so to do, shall furnish to the Commissioners making the request, within such time, not being less than twenty-eight days, as may be specified therein, such particulars as those Commissioners may require for the purpose of enabling any tax or duty to be charged or recovered in accordance with the provisions of this Schedule.

(2) If any person other than a custodian fails without reasonable excuse to comply with any request under this paragraph within the time specified in the request he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

2. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say,—

"the law relating to trading with the enemy" includes the Trading with the Enemy Act, 1939, the Defence (Trading with the Enemy) Regulations, 1940, and any orders made by the Treasury or the Board of Trade under or by virtue of that Act or those Regulations, and, except in relation to property in enemy territory within the meaning of that Act, includes also any corresponding law of any country or territory outside the United Kingdom;

"custodian" means a custodian of enemy property appointed under the said Act;

"property" has the meaning assigned to it by section seven of the said Act;

and any reference in this Schedule to any money, property or income received by or in the hands of a custodian shall be construed as including a reference to money, property or income held to the order of a custodian.

3. Part I of this Schedule shall be construed as one with the Income Tax Acts. . .

THE FINANCE ACT, 1945

(8 & 9 Geo. 6, c. 24)

[15th June, 1945]

. . . . . .

2. *Income tax for* 1945—46.—(1) Income tax for the year 1945—46 shall be charged at the standard rate of ten shillings in the pound, and, in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds, as Parliament may hereafter determine.[1]

(2) Subject to the provisions of section twenty-six of the Finance Act, 1944, and of any Act of the present Session amending the law relating to income tax, all such enactments as had effect with respect to the income tax charged for the year 1944—45, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1945—46.

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[1] See No. 2 Act of 1945, s. 16, p. 776.

4. *Higher rates of income tax for* 1944—45.—Income tax for the year 1944—45 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the year 1944—45 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

. . . . . .

7. *Short title and construction.*—(1) This Act may be cited as the Finance Act, 1945.

(2) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

THE INCOME TAX ACT, 1945

(8 & 9 GEO. 6, c. 32)

[15th June, 1945]

An Act to amend the law relating to income tax in certain respects.

PART I—INDUSTRIAL BUILDINGS AND STRUCTURES, ETC.

1. *Initial allowances.*—(1) Subject to the provisions of this Act, where, on or after the appointed day, a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade carried on either by him or by such a lessee as is hereinafter mentioned, there shall be made to the person who incurred the expenditure, for the year of assessment hereinafter mentioned, an allowance (in this Part of this Act referred to as "an initial allowance") equal to one-tenth thereof.

The said lessees are lessees occupying the building or structure on the construction of which the expenditure was incurred under a lease to which the relevant interest, as defined for the purposes of this Part of this Act, is reversionary.

(2) The said year of assessment shall, in the case of a person incurring expenditure, be the year of assessment in his basis period for which the expenditure was incurred:

Provided that where the first use to which the building or structure is put is a use by a person occupying it by virtue of a tenancy to which the relevant interest is reversionary, and the tenancy begins after the incurring of the expenditure, the said year of assessment shall be the year of assessment in which the tenancy begins.

(3) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the sixth day of April, nineteen hundred and forty-four, but before the appointed day, as if it had been incurred by him on the appointed day:

Provided that—

(a) the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount thereof less the total amount of the relevant

mills, factories and exceptional depreciation allowances made for years of assessment before that in which the appointed day falls; and

(b) no initial allowance shall be allowed if—

(i) before the appointed day, the relevant interest in the building or structure is sold or, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or

(ii) before the appointed day, the building or structure is demolished or is destroyed; or

(iii) at any time before the appointed day the building or structure is, but on the appointed day the building or structure is not, an industrial building or structure.

(4) Notwithstanding anything in this section, no initial allowance shall be made in respect of any expenditure if, when the building or structure comes to be used, it is not an industrial building or structure, and where an initial allowance has been granted in respect of any expenditure otherwise than in accordance with the provisions of this section, all such additional assessments shall be made as are necessary to secure that effect is given to those provisions.

(5) Any expenditure incurred on or after the sixth day of April, nineteen hundred and forty-four, for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

2. *Annual allowances.*—(1) Subject to the provisions of this Act, where—

(a) any person is, at the end of his basis period for the year of assessment in which the appointed day falls or any subsequent year of assessment, entitled to an interest in a building or structure; and

(b) at the end of the said basis period, the building or structure is an industrial building or structure; and

(c) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,

an allowance (in this Part of this Act referred to as "an annual allowance") equal to one-fiftieth of that expenditure shall be made to him for that year of assessment.

(2) Where, at any time on or after the appointed day, the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure, the annual allowance in respect of that expenditure shall, in the case of years of assessment the basis periods for which end after the time of that sale,—

(a) be computed by reference to the residue (as defined in the provisions of this Part of this Act relating to the writing off of expenditure) of that expenditure immediately after the sale; and

(b) be the fraction of the said residue the numerator of which is one and the denominator of which is the number of years of assessment comprised in the period which—

(i) begins with the first year of assessment for which the buyer is entitled to an annual allowance in respect of the expenditure or

would be so entitled if the building or structure had at all material times continued to be an industrial building or structure; and

(ii) ends with the fiftieth year of assessment after that in which the building or structure was first used,

and so on for any subsequent sales.

(3) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance made to a person for any year of assessment in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of his basis period for that year of assessment.

3. *Balancing allowances and balancing charges.*—(1) Where any capital expenditure has been incurred on the construction of a building or structure, and, on or after the appointed day, any of the following events occurs while the building or structure is an industrial building or structure, that is to say—

(a) the relevant interest in the building or structure is sold; or

(b) that interest, being an interest depending on the duration of a foreign concession, comes to an end on the coming to an end of that concession; or

(c) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon, or

(d) the building or structure is demolished or destroyed, or, without being demolished or destroyed, ceases altogether to be used,

an allowance or charge (in this Part of this Act referred to as "a balancing allowance" or "a balancing charge") shall, in the circumstances mentioned in this section, be made to or, as the case may be, on, the person entitled to the relevant interest immediately before that event occurs, for the year of assessment in his basis period for which that event occurs:

Provided that no balancing allowance or balancing charge shall be made to or on any person for any year of assessment by reason of any event occurring after the end of his basis period for the fiftieth year of assessment after that in which the building or structure was first used.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the residue of the expenditure immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of the said residue or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess, or, where the residue is nil, to the said moneys.

(4) If, for any of the relevant years of assessment (as defined for the purposes of this subsection) neither an annual allowance nor a scientific research allowance has been made, the two last preceding subsections shall have effect subject to the modification that the amount of the balancing allowance, or, as the case may be, the amount on which the balancing charge is to be made, shall be reduced by applying thereto the fraction, the numerator of which is the number of the relevant years of assessment for which an annual allowance or scientific research allowance has been made in respect of the expenditure and the denominator of which is the total number of the relevant years of assessment.

In this subsection, the expression "the relevant years of assessment" means all years of assessment after that in which the building or structure was first used for any purpose up to and including that in which the event takes place which gives rise to the allowance or charge:

Provided that where, before the said event but on or after the appointed day, the building or structure has been sold while an industrial building or structure, the said expression means all years of assessment for which either—

(a) an annual allowance is made by reason of the building or structure being an industrial building or structure at any time between the sale and the event, or where there has been more than one such sale, between the last such sale and the event; or

(b) an annual allowance would have fallen to be made if the building or structure had been an industrial building or structure at all times between the sale or, as the case may be, the last such sale, and the event.

(5) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount on which a balancing charge is made on a person in respect of any expenditure on the construction of a building or structure exceed the amount of the initial allowance, if any, made to him in respect of that expenditure together with the amount of any annual allowances or scientific research allowances in respect of that expenditure, and any relevant mills, factories or exceptional depreciation allowances in respect of that building or structure, made to him for years of assessment his basis periods for which end on or before the date of the event which gives rise to the charge.

4. *Writing off of expenditure and meaning of "residue of expenditure."*—(1) Any expenditure incurred on the construction of any building or structure shall be deemed for the purposes of this Part of this Act to be written off to the extent and as at the times hereafter specified in this section, and references in this Part of this Act to the residue of any such expenditure shall be construed accordingly.

(2) If an initial allowance is made in respect of the expenditure, the amount of that allowance shall be written off as at the time when the building or structure is first used.

(3) If, by reason of the building or structure being at any time an industrial building or structure, an annual allowance is made for any year of assessment in respect of the expenditure, the amount of that allowance shall be written off as at the said time:

Provided that where at the said time an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be written off by this subsection as at the said time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.

(4) If a scientific research allowance is made for any year of assessment in respect of the expenditure, the amount of that allowance shall be written off, in the case of an allowance under section twenty-eight of the Finance Act, 1944, as at the end of the basis year (as defined in that section) for that year of assessment, and, in the case of an allowance under section twenty-nine of that Act, as at the time when the asset ceases to be used by the person in question for scientific research connected with the trade:

Provided that where, at the time when an amount falls to be written off under this subsection, an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be written

off by this subsection as at that time shall be taken into account in computing the residue of the expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.

(5) If, in the case of any year of assessment after that in which the building or structure is first used, no annual allowance or scientific research allowance falls to be made to any person in respect of the expenditure, then, subject to the provisions of this and the next succeeding subsection, an amount equal to one-fiftieth of the expenditure shall be written off as at the end of the previous year of assessment:

Provided that—

(a) in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, this subsection shall not apply for any purpose if the building or structure was an industrial building or structure on the day preceding the beginning of the year of assessment; and

(b) where this subsection does apply in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, the amount to be written off shall, if the building or structure has been sold on or after the appointed day while an industrial building or structure, be the amount which would have fallen to be written off if—

(i) the building or structure had been an industrial building or structure in use on the said preceding day for the purposes of a trade carried on by a person entitled to the relevant interest in the building or structure; and

(ii) the basis period of that person for the year of assessment had ended on the said preceding day; and

(iii) an annual allowance had been made to him for the year of assessment accordingly.

(6) If any relevant mills, factories or exceptional depreciation allowances are made in respect of the building or structure for any year of assessment before that in which the appointed day falls, and either—

(a) no amount falls to be written off under the last preceding subsection as at any date before the beginning of the year of assessment in which the appointed day falls; or

(b) the total amounts falling to be written off thereunder as at dates before the beginning of the year in which the appointed day falls are less than the total relevant mills, factories or exceptional depreciation allowances for years of assessment before that year,

an amount equal to the total relevant mills, factories or exceptional depreciation allowances or, as the case may be, to that total amount less the total amounts falling to be written off as aforesaid, shall be written off as at the end of the year of assessment immediately preceding that in which the appointed day falls.

(7) If, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be written off as at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.

(8) If, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part of this Act to be increased as at the time of the sale by the amount on which the charge is made.

(9) Where the Crown is at any time entitled to the relevant interest in a building or structure, the preceding provisions of this section shall have effect as if all such annual allowances, balancing allowances, mills, factories or exceptional depreciation allowances and balancing charges had been made as could have been made if—

(a) a person other than the Crown had been entitled to the relevant interest; and

(b) all things which, while the Crown is entitled to the relevant interest, have been done in relation to the building or structure by or to the Crown or by or to any person using the building or structure under the authority of the Crown, had been done by or to that other person, for the purposes of and in the course of a trade carried on by him; and

(c) any sale or other disposition by or on behalf of the Crown of the relevant interest in the building or structure had been made in connection with the termination of that trade; and

(d) the basis periods of that other person in respect of that trade had, in the case of each year of assessment ended immediately before the beginning of the year of assessment.

5. *Buildings and structures bought unused.*—(1) Where expenditure is incurred on the construction of a building or structure and, before that building or structure is used, the relevant interest therein is sold—

(a) the expenditure actually incurred on the construction thereof shall be left out of account for the purposes of the preceding provisions of this Part of this Act; but

(b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction thereof equal to the said expenditure or to the net price paid by him for the said interest, whichever is the less:

Provided that, where the relevant interest in the building or structure is sold more than once before the building or structure is used, the provisions of paragraph (b) of this section shall have effect only in relation to the last of those sales.

(2) Where the expenditure incurred on the construction of a building or structure was incurred by a person carrying on a trade which consists, as to the whole or any part thereof, in the construction of buildings or structures with a view to their sale, and, before the building or structure is used, he sells the relevant interest therein in the course of that trade, or, as the case may be, of that part of that trade, paragraph (b) of the preceding subsection shall have effect subject to the following modifications—

(a) if that sale is the only sale of the relevant interest before the building or structure is used, the said paragraph (b) shall have effect as if the words "the said expenditure or to" and the words "whichever is the less" were omitted; and

(b) in any other case, the said paragraph (b) shall have effect as if the reference to the expenditure actually incurred on the construction of the building or structure were a reference to the price paid on the said sale.

6. *Manner of making allowances and charges.*—(1) Except in the cases mentioned in the following provisions of this section, any allowance or charge made to or on a person under the preceding provisions of this Part of this Act shall be made to or on him in charging the profits or gains of his trade.

(2) An initial allowance shall be made to a person by way of discharge or repayment of tax if his interest in the building or structure is subject to any lease when the expenditure is incurred or becomes subject to any lease before the building or structure is first used for any purpose.

(3) An annual allowance shall be made to a person for a year of assessment by way of discharge or repayment of tax if his interest is subject to any lease at the end of his basis period for that year of assessment.

(4) A balancing allowance shall be made to a person by way of discharge or repayment of tax if his interest is subject to any lease immediately before the event giving rise to the allowance.

(5) A balancing charge shall be made on a person under Case VI of Schedule D if his interest is subject to any lease immediately before the event giving rise to the charge.

(6) Any allowance, which under the preceding provisions of this section, is to be made by way of discharge or repayment of tax shall be available primarily against the following income, that is to say—

(a) income taxed under Schedule A in respect of any premises which at any time in the year consist of or include an industrial building or structure; or

(b) any rent of any such premises as aforesaid charged to tax by virtue of section fifteen, section sixteen or section seventeen of the Finance Act, 1940; or

(c) income which is the subject of a balancing charge under this Part of this Act.

7. *Cessation of mills, factories allowances.*—(1) Subject to the provisions of this section, no allowance shall be made under section fifteen of the Finance Act, 1937 (which provides for an allowance for depreciation of mills, factories and other similar premises) for the year of assessment in which the appointed day falls or any subsequent year of assessment.

(2) *Notwithstanding anything in the preceding subsection,* if an allowance falls to be made under the said section fifteen in respect of any premises in the case of any trade for the last year of assessment before that in which the appointed day falls, an allowance shall, by virtue of this subsection, be made under and subject to the provisions of the said section fifteen in respect of those premises for the year of assessment in which the appointed day falls and each of the next four years of assessment in the case of every trade carried on thereon:

Provided that if, at any time in the year of assessment in which the appointed day falls or any of the next four years of assessment, any person to whom an allowance would otherwise fall to be made under the said section for that year of assessment in respect of the premises, by notice in writing to the surveyor, elects that the said section fifteen shall no longer apply to the premises—

(a) no allowance shall be made under the said section fifteen for that or any subsequent year of assessment in the case of that person's trade; and

(b) no allowance shall be made under the said section fifteen for any year of assessment in the case of any trade carried on on those premises after that person's trade has ceased to be carried on thereon.

(3) Where by virtue of the last preceding subsection an allowance falls to be made under the said section fifteen for the year of assessment in which the appointed day falls or any subsequent year of assessment in the case of any trade, the other provisions of this Part of this Act shall have effect in

relation to the premises in question as if the appointed day were postponed until the first day of the first year of assessment for which no allowance falls to be made under that section in the case of that or any other trade.

6. *Definition of "industrial building or structure."*—(1) Subject to the provisions of this section, in this Part of this Act the expression "industrial building or structure" means a building or structure in use—

(a) for the purposes of a trade carried on in a mill, factory or other similar premises; or

(b) for the purposes of a transport, dock, inland navigation, water, electricity or hydraulic power undertaking; or

(c) for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or

(d) for the purposes of a trade which consists in the storage—

(i) of goods or materials which are to be used in the manufacture of other goods or materials; or

(ii) of goods or materials which are to be subjected, in the course of a trade, to any process; or

(iii) of goods or materials which, having been manufactured or produced or subjected, in the course of a trade, to any process, have not yet been delivered to any purchaser; or

(iv) of goods or materials on their arrival by sea or air into any part of the United Kingdom; or

(e) for the purposes of a trade which consists in the working of any mine, oil well or other source of mineral deposits, or of a foreign plantation; or

(f) for the purposes of a trade consisting in all or any of the following activities, that is to say, ploughing or cultivating land (other than land in the occupation of the person carrying on the trade) or doing any other agricultural operation on such land, or threshing the crops of another person,

and, in particular, the said expression includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose.

(2) The provisions of subsection (1) of this section shall apply in relation to a part of a trade or undertaking as they apply in relation to a trade or undertaking:

Provided that where part only of a trade or undertaking complies with the conditions set out in the said provisions, a building or structure shall not, by virtue of this subsection, be an industrial building or structure unless it is in use for the purposes of that part of that trade or undertaking.

(3) Notwithstanding anything in subsection (1) or subsection (2) of this section but subject to the provisions of subsection (4) of this section, the expression "industrial building or structure" does not include any building or structure in use as, or as part of, a dwelling-house, retail shop, showroom, hotel or office or for any purpose ancillary to the purposes of a dwelling-house, retail shop, showroom, hotel or office:

Provided that this subsection shall not apply to, or to part of, a building or structure which was constructed for occupation by, or for the welfare of, persons employed at or in connection with the working of a mine, oil well or other source of mineral deposits, or for occupation by, or for the welfare of, persons employed on, or in connection with the growing and harvesting of the crops on, a foreign plantation, if the building or structure is likely to have little or no value to the person carrying on the trade when the mine,

oil well or other source or the plantation is no longer worked, or will cease to belong to such person on the coming to an end of a foreign concession under which the mine, oil well or other source, or the plantation, is worked.

(4) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure and every part thereof shall be treated as an industrial building or structure.

(5) In this section, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"retail shop" includes any premises of a similar character where retail trade or business (including repair work) is carried on;

"dock" includes any harbour, wharf, pier or jetty or other works in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation, and "dock undertaking" shall be construed accordingly;

"water undertaking" means an undertaking for the supply of water for public consumption;

"electricity undertaking" means an undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy;

"hydraulic power undertaking" means an undertaking for the supply of hydraulic power;

"undertaking" does not include an undertaking not carried on by way of trade;

"foreign plantation" means any land outside the United Kingdom used for the growing and harvesting of crops;

"crops" includes any form of vegetable produce and "harvesting" includes the collection thereof, however effected.

9. *Sports pavilions.*—Where a building or structure which is not an industrial building or structure as defined in the last preceding section, is occupied by the person carrying on a trade and used as a sports pavilion for the welfare of all or any of the workers employed in that trade, this Part of this Act shall apply in relation to that building or structure as if it were an industrial building or structure.

10. *Meaning of "the relevant interest."*—(1) Subject to the provisions of this section, in this Part of this Act the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building or structure, the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it.

(2) Where, when he incurs expenditure on the construction of a building or structure, a person is entitled to two or more interests in the building or structure, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part of this Act.

(3) An interest shall not cease to be the relevant interest for the purposes of this Part of this Act by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender thereof, or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

(4) Where the relevant interest is a leasehold interest which comes to an end before the appointed day and the last preceding subsection does not apply, the interest which is immediately reversionary thereon shall be deemed, for the purposes of the provisions of this Part of this Act in so far as they relate to annual allowances, balancing allowances and balancing charges, to have thereupon become the relevant interest.

11. *Temporary disuse of industrial buildings or structures.*—(1) For the purposes of this Part of this Act, a building or structure shall not be deemed to cease altogether to be used by reason that it falls temporarily out of use on or after the appointed day, and where, immediately before any period of temporary disuse beginning on or after that day, a building or structure is an industrial building or structure, it shall be deemed to continue to be an industrial building or structure during the period of temporary disuse.

(2) Notwithstanding any other provision of this Act as to the manner of making allowances and charges, where by reason of the provisions of the preceding subsection a building or structure is deemed to continue to be an industrial building or structure while temporarily out of use, then if—

(a) upon the last occasion upon which the building or structure was in use as an industrial building or structure, it was in use for the purposes of a trade which has since been permanently discontinued: or

(b) upon the last occasion upon which the building or structure was in use as an industrial building or structure, the relevant interest therein was subject to a lease which has since come to an end,

any annual allowance or balancing allowance falling to be made to any person in respect of the building or structure during any period for which the temporary disuse continues after the discontinuance of the trade or the coming to an end of the lease shall be made by way of discharge or repayment of tax, and any balancing charge falling to be made on any person in respect of the building or structure during that period shall be made under Case VI of Schedule D.

(3) The reference in this section to the permanent discontinuance of a trade does not include a reference to the happening of any event which, by virtue of any provisions in Rule 11 of the Rules applicable to Cases I and II of Schedule D, is to be treated as equivalent to the discontinuance of the trade.

12. *Requisitioned land, holding over of leased land, and other special cases.*—(1) The provisions of this Part of this Act shall have effect in relation to any period of requisition of any land as if the Crown had been in possession of that land for that period by virtue of a lease, and any reference in this Part of this Act to the surrender of a lease or the extinguishment thereof on the person entitled thereto acquiring the interest which is reversionary thereon, or to the merger of a leasehold interest, shall be construed accordingly, and any sum paid to the Crown in respect of any building or structure constructed on any land during any period of requisition of that land, being a sum paid, whether by virtue of any enactment or otherwise, by the person who, subject to the rights of the Crown, is entitled to possession of the land, shall be deemed for the purposes of this Part of this Act to be a sum paid in consideration of the surrender of that lease:

Provided that where a person carrying on a trade is authorised by the Crown to occupy the land or any part thereof for the whole or any part of the period of requisition, the provisions of this Part of this Act shall have effect as if the Crown had granted a sub-lease to that person of that land or, as the case may be, that part thereof, for the period of requisition or, as the case may be, for that part of the period for which the said person occupies

the land, and the preceding provisions of this subsection shall have effect in relation to that sub-lease as they have effect in relation to the lease therein mentioned, subject, however, to the modification that for the reference to any sum paid to the Crown there shall be substituted a reference to any sum paid to the said person.

In this subsection, the expression "period of requisition" means a period in respect of which compensation is, or, but for any agreement to the contrary, would be, payable under paragraph (a) of subsection (1) of section two of the Compensation (Defence) Act, 1939, by reference to the rent which might reasonably be expected to be payable under a lease granted immediately before the beginning of that period.

(2) Where, with the consent of the lessor, a lessee of any building or structure remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part of this Act to continue so long as he remains in possession as aforesaid.

(3) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, the provisions of this Part of this Act shall have effect as if the second lease were a continuation of the first lease.

(4) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, the provisions of this Part of this Act shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.

(5) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, the provisions of this Part of this Act shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

13. *Exclusion of double allowances, etc.*—(1) No allowance shall be made under, or by virtue of, any of the provisions of this Part of this Act in respect of, or of premises including, or of expenditure on, a building or structure if, for the same or any previous or subsequent year of assessment, an allowance is or can be made under any of the provisions of Part II, Part III or Part IV of this Act in respect of, or of expenditure on, that building or structure

(2) Without prejudice to the provisions of the preceding subsection, any reference in this Part of this Act to the incurring of expenditure on the construction of a building or structure does not include expenditure on the provision of machinery or plant or on any asset which has been treated for any year of assessment as machinery or plant.

14. *Interpretation of Part I.*—(1) References in this Part of this Act to expenditure incurred on the construction of a building or structure do not include—

(a) any expenditure incurred on the acquisition of, or of rights in or over, any land; or

(b) any expenditure incurred on preparing, cutting, tunnelling or levelling any land:

Provided that paragraph (b) of this subsection shall not apply to expenditure on work done on the land to be covered by a building or structure for the purposes of preparing the land to receive the foundations of the building or structure, being work which may be expected to be valueless when the building

or structure is demolished and not being work which consists of cutting or tunnelling.

(2) A person who has incurred expenditure on the construction of a building or structure shall be deemed, for the purposes of any provision of this Part of this Act referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as he would have had if the construction thereof had been completed at that time.

(3) Without prejudice to any of the other provisions of this Act relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall, for the purposes of this Part of this Act, be deemed to be reduced by an amount equal to so much thereof, as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part of this Act.

Part II—Machinery and Plant

15. *Initial allowances.*—(1) Where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance (in this Part of this Act referred to as "an initial allowance") equal to one-fifth of the expenditure.

(2) Where, on or after the sixth day of April, nineteen hundred and forty-four, but before the appointed day, a person carrying on a trade incurs any capital expenditure on the provision of machinery or plant for the purposes of the trade, he shall be treated for the purposes of subsection (1) of this section as having incurred, on the appointed day, capital expenditure on the provision of that machinery or plant for those purposes equal to the amount of that expenditure less the total amount of any allowances made to him in respect of the machinery or plant under Rule 6 of the Rules applicable to Cases I and II of Schedule D for any year of assessment before that in which the appointed day falls and of any relevant exceptional depreciation allowances made to him in respect thereof for any such year:

Provided that this subsection shall not apply to any expenditure on the provision of machinery or plant if, on the appointed day, the machinery or plant is no longer owned by the person who incurred the expenditure or is out of use as being worn out or obsolete or otherwise useless or no longer required.

(3) Any expenditure incurred on or after the said sixth day of April for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

(4) Where there is a contract for the sale of a ship and either—

(a) the price becomes payable before the said sixth day of April, but the ship is delivered in performance of the contract on or after that date; or

(b) the price is payable in instalments, some of which are payable before that date and some of which are payable on or after that date,

so much of the price as becomes payable before that date shall for the purposes of this section be deemed to have become payable on that date.

16. *Amendment of allowances under Rule 6 of Cases I and II of Schedule D.*—(1) For the purposes of paragraph (1) of Rule 6 of the Rules applicable

to Cases I and II of Schedule D (which provides for a deduction in respect of the diminished value of machinery or plant by reason of wear and tear during the year of assessment) the machinery or plant in use at the end of the basis period shall, in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, be taken to be the machinery or plant used for the purposes of the trade during the year.

(2) The amount of any deduction under the said Rule 6 shall, in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, be computed as if paragraph (1) of the said Rule 6 had provided, in relation to any such years, for a deduction equal to five-fourths of the amount considered by the Commissioners having jurisdiction in the matter to be just and reasonable as representing the diminished value by reason of wear and tear during the year of the machinery and plant, and no additional deduction shall be made for any of those years under section eighteen of the Finance Act, 1932 (which, as amended by section twenty-two of the Finance Act, 1938, provides for an additional deduction equal to one-fifth of the deduction under the said Rule 6):

Provided that if, in the case of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, the person carrying on the trade so elects, the deduction to be allowed in respect of machinery or plant used in connection with the working of the source shall, instead of being five-fourths of the amount aforesaid, be such sum as is considered by the Commissioners to be just and reasonable having regard to the date when the source is likely to cease to be worked and the probable value of the machinery or plant at that date to the person carrying on the trade.

(3) In the case of machinery or plant provided on or after the appointed day—

(a) in considering what deduction is to be allowed under Rule 6 of the Rules applicable to Cases I and II of Schedule D, there shall be left out of account a proportion of the machinery or plant equal to the proportion of the expenditure on the provision thereof which is or is to be met directly or indirectly by the Crown or any government or public or local authority, whether in the United Kingdom or elsewhere, or by any person other than the person providing the machinery or plant; and

(b) the deduction allowed under the said Rule 6 for any year of assessment shall not exceed what, apart from any deduction which falls to be made under the said Rule for that year, would be the amount of the capital expenditure on the provision of the machinery or plant still unallowed as at the beginning of the year.

(4) Where, in considering whether any, and, if so, what, deduction is to be allowed in respect of any machinery or plant under the said Rule 6 or under Rule 7 of the said Rules, account falls to be taken of deductions previously allowed under the said Rule 6, any initial allowance granted in respect of the machinery or plant shall be taken into account as if it were a deduction allowed under the said Rule 6.

17. *Balancing allowances and balancing charges.*—(1) Subject to the provisions of this section, where on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—

(a) the machinery or plant is sold, whether while still in use or not; or

(b) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or

(c) the machinery or plant is destroyed; or

(d) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as "a balancing allowance" or "a balancing charge") shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the allowance" or "a balancing charge") shall, in the circumstances mentioned year of assessment in his basis period for which that event occurs:

Provided that where either—

(i) the trade consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, and any deduction allowed for any year of assessment in respect of the machinery or plant has been calculated in accordance with the proviso to subsection (2) of the last preceding section; or

(ii) the event in question is the machinery or plant ceasing to belong to the person carrying on the trade on the coming to an end of a foreign concession,

a balancing allowance or a balancing charge may, in the circumstances mentioned in this section, be made in respect of the machinery or plant notwithstanding that the event in question occurs at a time when the trade is permanently discontinued.

Any reference in this subsection to the permanent discontinuance of a trade does not include a reference to the happening of any event which, by virtue of any of the provisions of Rule 11 of the Rules applicable to Cases I and II of Schedule D, is to be treated as equivalent to the discontinuance of the trade.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid, or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys:

Provided that where the loss of a ship is due to a war risk connected with any war in which His Majesty is engaged at the date of the passing of this Act, or to the carriage, in connection with any such war, of explosives or other dangerous cargo in a manner which would be abnormal in time of peace, then, whether the loss occurs before or after the conclusion of, or of hostilities in, that war, no balancing charge shall be made by reason of the loss in respect of expenditure on the ship.

In this subsection, the expression "war risk" means any risk falling within the definition of "war risks" contained in the form of policy set out in the First Schedule to an agreement for re-insurance of British ships made by the Minister of War Transport on the sixteenth day of September, nineteen hundred and forty-three, a copy of which was laid before each House of Parliament on the fourth day of November, nineteen hundred and forty-three,

in pursuance of subsection (2) of section one of the War Risks Insurance Act, 1939.

(4) Notwithstanding anything in the last preceding subsection, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say:—

(a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;

(b) the amount of any deductions allowed to him in respect of the machinery or plant in question under Rule 6 of the Rules applicable to Cases I and II of Schedule D;

(c) the amount of any additional deductions allowed to him under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938, in respect of the machinery or plant;

(d) the amount of any relevant exceptional depreciation allowance made to him in respect of the machinery or plant;

(e) the amount of any scientific research allowances made to him in respect of the expenditure; and

(f) the amount of any balancing allowance previously made to him in respect of the expenditure.

18. ***Replacement of machinery or plant.***—(1) Where machinery or plant in the case of which any of the events mentioned in subsection (1) of the last preceding section has occurred is replaced by the owner thereof and a balancing charge falls to be made on him by reason of that event, or, but for the provisions of this subsection, would have fallen to be made on him by reason thereof, then, if by notice in writing to the surveyor he so elects, the following provisions shall have effect, that is to say—

(a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant—

(i) the charge shall be made only on an amount equal to the difference; and

(ii) no initial allowance, no balancing allowance, and no deduction under the said Rule 6 shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and

(iii) in considering whether any, and, if so, what, balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;

(b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made—

(i) the charge shall not be made; and

(ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and

(iii) in considering what deduction is to be allowed under the said Rule 6 in respect of the new machinery or plant, there shall be left out of account a proportion of the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and

(iv) in considering whether any, and, if so, what, balancing allowance or balancing charge falls to be made in respect of the new

machinery or plant, the initial allowance granted in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

(2) Rule 7 of the Rules applicable to Cases I and II of Schedule D (which provides for an obsolescence allowance)—

(a) shall not have effect in the case of any replacement of plant or machinery provided on or after the appointed day;

(b) shall, in the case of the replacement on or after the appointed day of machinery or plant provided before the appointed day, have effect only if the person carrying on the trade by notice in writing to the surveyor elects that it shall have effect in relation thereto,

and where any such election is made as is mentioned in paragraph (b) of this subsection, no balancing allowance shall be made in respect of the sale, destruction or putting out of use of the machinery or plant which is replaced.

19. *Meaning of "expenditure unallowed."*—References in this Part of this Act to the amount still unallowed of any expenditure as at any time shall be construed as references to the amount of that expenditure less—

(a) the initial allowance, if any, made in respect thereof to the person who incurred it;

(b) any deductions allowed to that person in respect of the machinery or plant on the provision of which the expenditure was incurred under Rule 6 of the Rules applicable to Cases I and II of Schedule D, under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938, being deductions allowed for a year of assessment before that in which the appointed day falls or for a year of assessment the basis period for which ended before the time in question;

(c) any relevant exceptional depreciation allowance made to him in respect of that machinery or plant;

(d) any scientific research allowance made to him in respect of that machinery or plant; and

(e) any balancing allowance made to him in respect of the expenditure:

Provided that where the profits or gains of a company or society from any trade include any income which is chargeable to tax by virtue of the provisions of subsection (1) or subsection (2) of section thirty-one of the Finance Act, 1933 (which charges income tax on mutual profits) but which is not otherwise chargeable to tax, then, in computing the amount of any expenditure which is still unallowed as aforesaid, there shall be deemed to have been allowed, for all years of assessment before the year 1933—34, all such deductions for wear and tear (but not including any additional deduction under section eighteen of the Finance Act, 1932) as would have been allowable in charging profits or gains which would have been chargeable if the said subsections (1) and (2) had been in force throughout those years.

20. *Application to lessors.*—(1) Where machinery or plant is let upon such terms that the burden of the wear and tear thereof falls directly upon the lessor, there shall be made to him, for the year of assessment in which the appointed day falls and every subsequent year of assessment, an allowance equal to five-fourths of the amount considered by the Commissioners having jurisdiction in the matter to be just and reasonable as representing the diminished value by reason of wear and tear, during so much of the period of the letting as falls within the year, of so much of the machinery or plant as is in use at the end of the year.

(2) Paragraph (5) of Rule 6 of the Rules applicable to Cases I and II of Schedule D shall not have effect in relation to the year of assessment in which the appointed day falls or any subsequent year of assessment, and the preceding provisions of this Part of this Act and the remaining provisions of the said Rule 6 shall apply in relation to any such lessor of machinery or plant as is mentioned in subsection (1) of this section as if the machinery or plant were, during the period of the letting, in use for the purposes of a trade carried on by him, and as if any reference to deductions allowed under the said Rule 6 included a reference to any allowance made under the said subsection (1).

21. *Expenditure on alterations to buildings in connection with the installation of machinery or plant.*—(1) Where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of the trade, the provisions of this Part of this Act and of Rule 6 of the Rules applicable to Cases I and II of Schedule D shall have effect as if the said expenditure were expenditure on the provision of that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

(2) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the sixth day of April, nineteen hundred and forty-four, but before the appointed day, as if it had been incurred by him on the appointed day.

22. *Manner of making allowances and charges.*—(1) Any allowance or charge made to or on any person under the preceding provisions of this Part of this Act shall, unless it is made under or by virtue of section twenty of this Act, be made to or on that person in charging the profits or gains of his trade.

(2) Any allowance made under or by virtue of section twenty of this Act shall be made by way of discharge or repayment of tax and shall be available primarily against income from the letting of machinery or plant.

(3) Any charge made under or by virtue of section twenty of this Act shall be made under Case VI of Schedule D.

23. *Application to professions, etc., and profits received from occupation of land.*—(1) Subject to the provisions of this section, the preceding provisions of this Part of this Act shall, with any necessary adaptations, apply in relation to—

(a) professions, employments, vocations and offices; and

(b) the occupation of lands (including woodlands), where the profits or gains thereof are assessable otherwise than by reference to assessable value,

as they apply in relation to trades.

(2) Where the profits or gains arising to any person from the occupation of lands (including woodlands) have, for any year of assessment, been determined by reference to assessable value, the amount still unallowed, as at any time after the end of that year of assessment, of any expenditure incurred by that person on the provision of machinery or plant in connection with those lands shall be determined as if there had fallen to be made to him, for that year of assessment, the like deductions—

(a) under Rule 6 of the Rules applicable to Cases I and II of Schedule D; and

(b) under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938,

as would have fallen to be made if, for that year of assessment, the profits or gains arising from the occupation of the lands had been determined otherwise than by reference to assessable value.

24. *Exclusion of double allowances.*—No allowance shall be made under any of the provisions of this Part of this Act or under Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D in respect of, or of the expenditure on, any machinery or plant if, for the same or any previous or subsequent year of assessment, an allowance is or can be made in respect of that expenditure under the provisions of Part IV of this Act.

PART III—MINES, OIL WELLS, ETC.

25. *Expenditure to which Part III applies.*—(1) In this Part of this Act, the expression "expenditure to which this Part of this Act applies" means capital expenditure incurred by any person in connection with the working of a mine, oil well or other source of mineral deposits of a wasting nature—

(a) on searching for or on discovering and testing deposits, or winning access thereto; or

(b) on the construction of any works which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a foreign concession, which are likely to become valueless when the concession comes to an end to the person working the source immediately before the concession comes to an end:

Provided that the said expression does not include—

(i) any expenditure on the acquisition of the site of the source, or of the site of any such works as aforesaid, or of rights in or over any such site;

(ii) any expenditure on the acquisition of, or of rights in or over, the deposits;

(iii) any expenditure on machinery or plant, or on any asset which has been treated for any year of assessment as machinery or plant;

(iv) any expenditure on works constructed wholly or mainly for subjecting the raw product of the source to any process, except a process designed for preparing the raw product for use as such;

(v) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;

(vi) any expenditure on a building where the whole of the building was constructed for use as an office;

(vii) any expenditure on so much of a building or structure as was constructed for use as an office, unless the capital expenditure on the construction of the part of the building or structure constructed for use as an office was not more than one-tenth of the capital expenditure incurred on the construction of the whole of the building or structure.

(2) Any reference in this Part of this Act to assets representing any expenditure includes, in relation to expenditure on searching for, discovering and testing deposits, any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

26. *Initial allowances.*—(1) Where, on or after the appointed day, a person carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature incurs for the purposes of the trade any expenditure to which this Part of this Act

applies on the construction of works likely to have little or no value to him when the source is no longer worked, there shall be made to him for the year of assessment in the basis period for which the expenditure is incurred an allowance (in this Part of this Act referred to as "an initial allowance") equal to one-tenth of that expenditure.

(2) The provisions of the preceding subsection shall apply in relation to expenditure incurred by a person on or after the sixth day of April, nineteen hundred and forty-four, but before the appointed day, as if it had been incurred by him on the appointed day:

Provided that—

(a) in the case of expenditure on a building or structure, the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount of the expenditure less any relevant mills, factories and exceptional depreciation allowances made in respect of the building or structure for any year of assessment before that in which the appointed day falls; and

(b) no initial allowance shall be made in respect of any expenditure if the asset representing the expenditure has been sold between the date when the expenditure was incurred and the appointed day.

27. *Annual allowances.*—(1) Where a person carrying on a trade which consists of or includes the working of any mine, oil well or other source of mineral deposits of a wasting nature has, at any time after the beginning of the appointed day and before the end of his basis period for any year of assessment, incurred for the purposes of that trade expenditure to which this Part of this Act applies, an allowance (in this Part of this Act referred to as "an annual allowance") shall be made to him for that year in respect of the whole of the expenditure to which this Part of this Act applies which he has incurred for the purposes of the trade and in connection with that source in the period which begins with the said day and ends with the end of the said basis period.

(2) The amount of the said allowance shall be the amount which results from applying to the residue of the expenditure the fraction of which—

(a) the numerator represents the output from the source in question in the basis period for the year in question; and

(b) the denominator represents the sum of that output and the total potential future output of the source, estimated as at the end of that period,

or the fraction one-twentieth, whichever is the greater.

(3) Where the source ceases to be worked or, in the case of a source worked under a foreign concession, the concession comes to an end, the person carrying on the trade may elect that the annual allowances, if any, for the year of assessment in which that event occurs and each of the five previous years of assessment shall be computed as if the reference in the last preceding subsection to the total potential future output of the source estimated as at the end of the basis period were a reference to the actual output of the source between the end of the basis period and the happening of the said event, and the said allowances shall be computed accordingly, and, notwithstanding anything in the Income Tax Acts limiting the time for the making of assessments or the allowance of claims for repayment, all such repayments and additional assessments shall be made as are necessary to enable effect to be given to this subsection.

(4) Where, on the appointed day, a person is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, the preceding provisions of this section shall have effect as if he had on that day incurred for the purposes of the trade and in connection with the source expenditure to which this Part of this Act applies of the amount specified in the First Schedule to this Act:

Provided that if he considers that that amount is inadequate having regard to the dates on which expenditure to which this Part of this Act applies was actually incurred in connection with the source before the appointed day, he may apply to the General or Special Commissioners for relief, and those Commissioners may authorise such increase in that amount as may be appropriate.

(5) References in this section to the residue of any expenditure, in relation to the annual allowance to be made for any year of assessment, are references to the amount thereof which remains after deducting therefrom—

(a) any initial allowances made in respect of that expenditure or any part thereof for that or any previous year of assessment;

(b) any annual allowances made in respect of that expenditure or any part thereof for any previous year of assessment;

(c) where the expenditure consists of or includes expenditure on a building, any relevant exceptional depreciation allowances made in respect of the building for any previous year of assessment not earlier than that in which the appointed day falls; and

(d) subject to the provisions of the next succeeding section, if, before the end of the basis period for the year of assessment for which the allowance is to be made, any asset representing the expenditure is sold or demolished or destroyed, the sale, insurance, salvage or compensation moneys.

28. *Sale of source or part of source as going concern.*—(1) The provisions of this section shall have effect where—

(a) a person who is, on or after the appointed day, carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature sells assets representing expenditure to which this Part of this Act applies; and

(b) the buyer of those assets buys them for the purposes of a trade carried on or to be carried on by him, being a trade which consists of or includes the working of the whole or any part of the source in connection with which the assets were provided.

(2) If the net proceeds of the sale are less than the residue of the expenditure on the assets immediately before the sale, an allowance (in this Part of this Act referred to as "a balancing allowance") shall be made to the seller, for the year of assessment in the basis period for which the sale took place, equal to the difference.

(3) If the net proceeds of the sale exceed the residue of the expenditure on the assets immediately before the sale, a charge (in this Part of this Act referred to as "a balancing charge") shall be made on the seller, for the year of assessment in the basis period for which the sale took place, on the amount of the excess.

(4) If the source in connection with which the expenditure was incurred has been worked before the appointed day, the last two preceding subsections shall have effect subject to the modification that the amount of the balancing allowance or the amount on which the balancing charge is made shall be reduced by applying thereto the fraction of which the numerator represents the total output from the source in the period which begins with the appointed

day and ends with the time of the sale, and the denominator represents the total output from the source up to the time of the sale:

Provided that if the person to whom a balancing allowance is to be made in respect of any expenditure considers that the amount by which the allowance is to be reduced under this subsection is excessive having regard to the dates on which the expenditure was actually incurred, he may apply to the General or Special Commissioners for relief, and those Commissioners may authorise such smaller reduction as may be appropriate.

(5) In no case shall the amount on which a balancing charge is made upon a person in respect of any assets exceed the difference between—

(a) the expenditure to which this Part of this Act applies which he incurred upon the assets; and

(b) the residue of that expenditure immediately before the sale.

(6) Whether a balancing allowance or balancing charge is made upon the seller or not, the deduction to be made in the case of the seller in respect of the assets under paragraph (d) of subsection (5) of the last preceding section shall, instead of being the sale, insurance, salvage or compensation moneys, be the residue of the expenditure attributable to the assets immediately before the sale.

(7) The buyer shall, for the purposes of the provisions of this Part of this Act relating to annual allowances, balancing allowances and balancing charges, be deemed to have incurred on the assets at the time of the sale expenditure to which this Part of this Act applies equal to whichever is the less of the following amounts, that is to say:—

(a) so much of the price as is attributable to the assets; and

(b) the residue of the expenditure on the assets immediately after the sale.

29. *Expenditure incurred by persons not engaged in the trade of mining, etc.*—(1) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this Part of this Act as if it had been incurred by that person on the first day on which he does carry it on:

Provided that nothing in this subsection shall authorise the making of an initial allowance in respect of any expenditure incurred before the sixth day of April, nineteen hundred and forty-four.

(2) Where a person incurs expenditure to which this Part of this Act applies on searching for, discovering and testing the mineral deposits of any mine, oil well or other source of a wasting nature and winning access to those deposits, and, without having carried on any trade which consists of or includes the working of the source, he sells any assets representing that expenditure, then, if the person who acquires the assets carries on such a trade as aforesaid in connection with the source, that person shall, for the purposes of this Part of this Act, be deemed to have incurred for the purposes of the trade and in connection with the source expenditure to which this Part of this Act applies equal to the amount of the expenditure to which this Act (*sic*) applies which is represented by the assets or the price paid by him for the assets, whichever is the smaller.

30. *Regulations.*—(1) The Commissioners of Inland Revenue may make regulations for carrying this Part of this Act into effect, and those regulations may in particular—

(a) lay down rules for determining the extent of the mineral deposits which are to be taken, for all or any of the purposes of this Part of this Act, as constituting a source and the amount of the output

from a source in any year or over any period, and in estimating total potential future output for any of those purposes;

(b) lay down rules for determining the residue of the expenditure attributable to an asset immediately before, or immediately after, the sale thereof;

(c) in relation to cases in which, by virtue of the preceding provisions of this Part of this Act, a person is deemed to have incurred expenditure on the appointed day, lay down rules for determining what assets are to be treated as representing that expenditure and how much of that expenditure is to be treated as incurred on any particular asset;

(d) lay down rules for determining, for the purposes of any application under this Part of this Act, whether and by how much—

(i) the amount of the expenditure which, under this Part of this Act, a person is to be treated as having incurred on the appointed day is inadequate; or

(ii) the amount by which any allowance is to be reduced under this Part of this Act is excessive.

(2) All regulations of the Commissioners of Inland Revenue under this section shall be laid before the Commons House of Parliament as soon as may be after the making thereof, and if that House within forty days from the date on which any such regulations are laid before it resolves that the regulations be annulled, the regulations shall thereupon cease to have effect, but without prejudice to anything previously done thereunder or to the making of new regulations.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the Commons House is adjourned for more than four days.

21. *Manner of making allowances and charges.*—All allowances and charges falling to be made under this Part of this Act to or on any person shall be made to or on him in charging the profits or gains of his trade.

Part IV—Agricultural Land and Buildings

22. *Amendment as to relief in respect of maintenance, etc., under Rule 8 of No. V of Schedule A.*—Subject to the provisions of this section, where for the year of assessment in which the appointed day falls or any subsequent year of assessment, the owner of an estate which consists of or includes agricultural land—

(a) would, under Rule 8 of No. V of Schedule A, have been entitled to repayment of the amount of the income tax upon any sum if the assessments on the units of assessment comprised in the estate, as reduced for the purposes of collection, had been sufficient for the purpose; but

(b) is unable under the said Rule to obtain repayment of that amount because the assessments on those units, as so reduced, are not sufficient for the purpose,

that sum shall be treated as if it were the amount of an allowance falling to be made under this Act by way of discharge or repayment of tax, available primarily against agricultural income:

Provided that the sum to be treated as aforesaid shall not exceed the sum which would have fallen to be so treated if—

(i) the estate had not included such of the units of assessment included therein as were used wholly for purposes other than purposes of husbandry; and

(ii) where units of assessment included in the estate were used partly for purposes of husbandry and partly for other purposes, the annual value of those units, and the assessment thereon as reduced for purposes of collection, were reduced to an extent corresponding to the extent to which those units were used for other purposes; and

(iii) so much only of the cost of maintenance, repairs, insurance and management actually incurred in connection with the estate or any part thereof were taken into account as is just having regard to the preceding provisions of this proviso.

28. *New allowances for certain capital expenditure.*—(1) Subject to the provisions of this section, where, in the year preceding any year of assessment, the owner or tenant of any agricultural or forestry land incurs any capital expenditure on the construction of farm houses, farm or forestry buildings, cottages, fences or other works (not being expenditure which could, or, in the case of expenditure by a tenant, could, if he had been the owner, be taken into account for the purposes of Rule 8 of No. V of Schedule A), he shall be entitled to an allowance for that year of assessment and each of the succeeding nine years of assessment equal to one-tenth of that expenditure.

(2) No expenditure shall be taken into account for the purposes of this section unless it is incurred for the purposes of husbandry or forestry on the agricultural or forestry land in question and—

(a) where the expenditure is on a farm house, one-third only of the expenditure shall be taken into account, or, if the accommodation and amenities of the farm house are out of due relation to the nature and extent of the farm, such proportion thereof not greater than one-third as may be just;

(b) where expenditure is incurred on any asset other than a farm house, being an asset which is to serve partly the purposes of husbandry or forestry and partly other purposes, such apportionment of the expenditure shall be made for the purposes of this subsection as may be just.

(3) No allowance shall be made under this section in respect of any expenditure incurred before the appointed day, but any expenditure incurred on or after the sixth day of April, nineteen hundred and forty-four, and before the appointed day, shall be deemed for the purposes of this section to have been incurred on the appointed day:

Provided that where any relevant exceptional depreciation allowance has been made for any year of assessment before that in which the appointed day falls in respect of any asset representing the whole or any part of that expenditure, that expenditure shall, for the purposes of the two preceding subsections, be deemed to be reduced by the amount of that allowance.

(4) Where a person would, if he continued to be the owner or, as the case may be, the tenant, of any land, be entitled under this section to an allowance in respect of any expenditure, and the whole of his interest in the land in question, or in any part of the land in question, is transferred, whether by operation of law or otherwise, to some other person, then—

(a) the amount of the allowance (if any) for the year of assessment in which the transfer takes place shall be apportioned between the person from whom the interest is transferred and the person to whom the interest is transferred; and

(b) the person to whom the interest is transferred shall, to the exclusion of the person from whom the interest is transferred, be entitled, where the interest transferred is in the whole of the land, to the

whole of the allowance for any subsequent year of assessment, and, where the interest transferred is in part only of the land, to so much of the allowance as is properly referable to that part of the land.

For the purposes of this subsection, where an interest in land is a tenancy and that tenancy comes to an end, that interest shall be deemed to have been transferred—

(i) if an incoming tenant makes any payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and

(ii) in any other case, to the owner of the interest in immediate reversion on the tenancy.

(5) An allowance under this section shall be made by way of discharge or repayment of tax and shall be available primarily against agricultural income and forestry income.

(6) Where any expenditure in respect of any sea wall or other embankment is taken into account for the purposes of this section, no deduction or allowance shall be made in respect of that expenditure for any year of assessment under paragraph (g) of Rule 1 of No. V of Schedule A.

(7) In this section, references to the year preceding the year of assessment shall be construed as references to the year ending with the thirty-first day of March next preceding that year, or with such other date as may be agreed by the owner or tenant in question and the surveyor.

34. *Interpretation of Part IV.*—In this Part of this Act—

"agricultural land" means land, houses, or other buildings in the United Kingdom occupied wholly or mainly for the purpose of husbandry;

"agricultural income" means income chargeable under Schedule A or Schedule B in respect of agricultural land, income chargeable under Schedule D in respect of farming or market gardening in the United Kingdom, and income chargeable under section fifteen, section sixteen or section seventeen of the Finance Act, 1940 (which relate to excess rents and rents under long leases) in respect of rent of agricultural land;

"estate" means any land or houses falling to be taken as the unit of comparison for the purposes of paragraph (4) of Rule 8 of No. V of Schedule A;

"forestry land" means woodlands in the United Kingdom in respect of which an election is in force for assessment and charge to tax under Schedule D by virtue of the provisions of the Rules applicable to Schedule B, and any houses or other buildings in the United Kingdom which are occupied together with and wholly or mainly for the purposes of such woodlands;

"forestry income" means income chargeable under Schedule A in respect of forestry land, income chargeable under Schedule D in respect of the occupation of woodlands in the United Kingdom, and income chargeable under section fifteen, section sixteen or section seventeen of the Finance Act, 1940 (which relate to excess rents and rents under long leases) in respect of rent of forestry land.

"unit of assessment" means any land (including houses or other buildings) which forms a unit of assessment for the purposes of Schedule A.

PART V—PATENTS

25. *Annual allowances for capital expenditure on purchase of patent rights.*—(1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights, there shall, subject to and in accordance with the subsequent provisions of this Part of this Act, be made to him for each of the relevant years of assessment, as hereinafter defined, an allowance (in this Part of this Act referred to as "an annual allowance") equal to the appropriate fraction, as hereinafter defined, of the amount of that expenditure:

Provided that no annual allowance shall be made to a person in respect of any expenditure unless—

(a) the allowance falls to be made to him in charging the profits or gains of his trade; or

(b) any income receivable by him in respect of the rights would be liable to income tax.

(2) The relevant years of assessment are, in the case of any person, the seventeen years of assessment beginning with the year of assessment in his basis period for which the expenditure was incurred:

Provided that—

(a) where the rights are purchased for a specified period, the preceding provisions of this subsection shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years or the number of years comprised within that period, whichever is the less; and

(b) where the rights purchased begin one complete year or more after the commencement of the patent and the preceding paragraph of this proviso does not apply, the said provisions shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent, or, if seventeen complete years have elapsed as aforesaid, of a reference to one year; and

(c) any expenditure incurred on or after the appointed day for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this subsection as if it had been incurred by that person on the first day on which he does carry it on unless, before the said first day, he has sold all the rights on the purchase of which the expenditure was incurred.

(3) The appropriate fraction is the fraction the numerator of which is one and the denominator of which is the number of the relevant years of assessment.

26. *Effect of lapse of patent rights, sales, etc.*—(1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of assessment, any of the following events occurs, that is to say—

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights or so much thereof as he still owns; or

(c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no annual allowance shall be made to that person for the year of assessment in his basis period for which the event takes place or any subsequent year of assessment.

(2) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of assessment, either of the following events occurs, that is to say—

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights, or so much thereof as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the subsequent provisions of this Part of this Act, be made to him for the year of assessment in his basis period for which the event takes place an allowance (in this Part of this Act referred to as "a balancing allowance") equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed, and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with the subsequent provisions of this Part of this Act, be made on him for the year of assessment in his basis period for which the sale takes place a charge (in this Part of this Act referred to as "a balancing charge") on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to the said net proceeds.

(4) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights sells a part of those rights and the last preceding subsection does not apply, the amount of any annual allowance made in respect of that expenditure for the year of assessment in his basis period for which the sale takes place or any subsequent year of assessment shall be the amount arrived at by—

(a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale; and

(b) dividing the result by the number of the relevant years of assessment which remained at the beginning of the year of assessment in his basis period for which the sale takes place,

and so on for any subsequent sales.

(5) References in the preceding provisions of this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any annual allowances made in respect thereof for years of assessment before the year of assessment in the basis period for which that event occurs, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

(6) Notwithstanding anything in the preceding provisions of this section, no balancing allowance shall be made in respect of any expenditure unless an annual allowance has been, or but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total annual allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

37. Charges on capital sums received for sale of patent rights.—(1) Where, on or after the appointed day, a person resident in the United Kingdom sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Part of this Act, be charged to tax under Case VI of Schedule D, for the year of assessment in which the sum is received by him and each of the five succeeding years of assessment, on an amount equal to one-sixth of that sum:

Provided that if that person, by notice in writing served on the surveyor not later than twelve months after the end of the year of assessment in which the said amount was received, elects that the whole of the said sum shall be charged to tax for the said year of assessment, it shall be charged to tax accordingly.

(2) Where, on or after the appointed day, a person not resident in the United Kingdom sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Part of this Act—

(a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and

(b) Rule 21 of the General Rules (which provides for the taxation of annual sums by deduction) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to tax; and

(c) all the other provisions of the Income Tax Acts shall have effect accordingly, except that section nineteen of the Finance Act, 1928 (which directs the amount of an assessment under the said Rule 21 to be allowed as a loss for certain purposes) shall not apply:

Provided that if, not later than twelve months after the end of the year of assessment in which the sum is paid, the person to whom it is paid, by notice in writing to the Commissioners of Inland Revenue, elects that the said sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election, so, however, that—

(i) the election shall not affect the amount of tax which is to be deducted and assessed under Rule 21 of the General Rules; and

(ii) where any sum is deducted under the said Rule 21, any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and

(iii) the said adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax (other than surtax) ultimately falling to be paid for that year is less than the amount of tax (other than surtax) paid for that year.

(3) Where the patent rights sold by a person or the rights out of which the patent rights sold by a person were granted were acquired by him by purchase and the price paid by him consisted wholly or partly of a capital sum, subsections (1) and (2) of this section shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum:

Provided that—

(a) where between the said purchase and the said sale he has sold part of the patent rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under this subsection in respect of the subsequent sale shall be itself reduced by the amount of that sum;

(b) nothing in this subsection shall affect the amount of tax which is to be deducted and assessed under Rule 21 of the General Rules by virtue of subsection (2) of this section, and, where any sum is deducted under the said Rule 21, any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.

(4) The provisions of the Second Schedule to this Act (which relate to deaths, windings up and partnership changes) shall have effect in relation to the charges provided for by this section, and, in the said Schedule, the expression "the principal section" means this section.

38. *Patent rights sold before appointed day.*—Nothing in the preceding provisions of this Part of this Act shall apply in relation to any patent rights if those rights, or any rights out of which they were granted, have been the subject of a sale before the appointed day and the proceeds of the sale consisted wholly or partly of a capital sum.

39. *Relief for expenses.*—(1) In computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining, for the purposes of the trade, the grant of a patent or an extension of the term of a patent.

(2) Where—

(a) on or after the appointed day, a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent or the obtaining of an extension of a term of a patent; and

(b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains thereof,

there shall be made to him, for the year of assessment in which these (*sic*) expenses were paid or incurred, an allowance equal to the amount thereof.

(3) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred, on or after the appointed day, by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

(4) The provisions of the last preceding subsection shall apply in relation to expenses incurred before the appointed day as if those expenses were incurred on the appointed day, subject to the modification that, if the patent in question was granted one complete year or more before the appointed day, the amount to be allowed shall be reduced by applying thereto the fraction the numerator of which is seventeen less the number of complete years comprised in the period beginning with the commencement of the patent and ending immediately before the appointed day, and the denominator of which is seventeen.

40. *Patent income to be earned income in certain cases.*—In considering, in relation to the year of assessment in which the appointed day falls or any subsequent year of assessment, whether any, and, if so, what, relief is to be granted to an individual under subsection (1) of section fifteen of the Finance Act, 1925 (which relates to earned income relief) or under subsection (2) of section eighteen of the Finance Act, 1920 (which relates to wife's earned income relief), any income from patent rights arising to an individual shall, where the patent was granted for an invention actually devised by him, whether alone or jointly with any other person, be deemed to be earned income:

Provided that where any part of the rights in question or of any rights out of which they were granted has at any time belonged to any other person, so much only of the said income shall be deemed to be earned income as is not properly attributable to the rights which have belonged to that other person.

41. *Spreading of income payments over several years.*—(1) Where a royalty or other sum to which Rule 19 or Rule 21 of the General Rules applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may require that the income tax (including surtax) payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax (including surtax) which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(2) Subsection (1) of this section shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(3) In this section, any reference to the income tax (including surtax) payable by a person includes, in cases where the profits of a wife are deemed to be the profits of the husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.

(4) Nothing in this section shall apply to any sum to which Rule 21 of the General Rules applies by virtue of any of the provisions of this Part of this Act or to any of the rents or other sums to which section twenty-one of the Finance Act, 1934, and section seventeen of the Finance Act, 1940, apply.

42. *When a person is to be treated as a trader.*—(1) An allowance or charge under any of the provisions of this Part of this Act shall be made to or on a person in charging the profits or gains of his trade if—

(a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to income tax under Case I of Schedule D for the year of assessment for which the allowance or charge is made; and

(b) at any time in his basis period for that year of assessment, the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade:

Provided that nothing in this subsection shall affect any of the preceding provisions of this Part of this Act allowing a deduction as expenses in

computing the profits or gains of a trade or requiring a charge to be made under Case VI of Schedule D.

(2) Save as aforesaid, an allowance under this Part of this Act shall be made by way of discharge or repayment of tax and shall be available against income from patents, and a charge under this Part of this Act shall be made under Case VI of Schedule D.

43. *Interpretation of Part V, etc.*—(1) In this Part of this Act, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"income from patents" means—

(a) any royalty or other sum paid in respect of the user of a patent;

(b) any amount on which tax is payable for any year of assessment by virtue of any of the provisions of this Part of this Act,

but does not include the rents and other sums to which section twenty-one of the Finance Act, 1934, and section seventeen of the Finance Act, 1940, apply;

"the commencement of the patent" means, in relation to a patent, the date as from which the patent rights become effective;

"patent rights" means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;

"United Kingdom patent" means a patent granted under the laws of the United Kingdom.

(2) In this Part of this Act, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent:

Provided that if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Part of this Act as thereby selling the whole of the rights.

(3) Where, under section twenty-nine of the Patents and Designs Act, 1907, or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, the provisions of this Part of this Act shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.

(4) Any reference in this Part of this Act to the number of years comprised in a period shall be construed as a reference to the number of consecutive periods of twelve months, beginning with the day with which the period begins, which are comprised in the period, any odd period of less than twelve months remaining at the end of the period being treated as a complete twelve months:

Provided that nothing in this subsection shall be construed as affecting any reference in this Part of this Act to the number of complete years comprised in any period or which have elapsed since any date.

PART VI—SCIENTIFIC RESEARCH

Application of s. 27 of Finance Act, 1944, to certain expenditure and payments incurred or made on or before appointed day.—For the purposes of section twenty-seven of the Finance Act, 1944 (which relates to payments

to research associations, universities and other bodies, and to certain other scientific research expenditure), any expenditure incurred and any sum paid on or after the sixth day of April, nineteen hundred and forty-four and on or before the appointed day, being expenditure or a sum which, apart from that section, would not have been deductible as an expense in computing the profits or gains of the trade for the purposes of income tax, shall be treated as if that expenditure was incurred or that sum was paid immediately after the appointed day.

45. *Application of ss.* 28 *and* 29 *of Finance Act*, 1944, *to certain capital expenditure incurred on or before appointed day.*—Where, on or after the first day of January, nineteen hundred and thirty-seven and on or before the appointed day, a person incurs expenditure of a capital nature on scientific research, he shall, unless the expenditure is represented by an asset which ceases, on or before the appointed day, to be used by him for scientific research related to the trade carried on by him, be treated for the purposes of sections twenty-eight and twenty-nine of the Finance Act, 1944 (which relate to allowances for capital expenditure on scientific research) as having incurred that expenditure immediately after the appointed day:

Provided that where that expenditure is represented by an asset, the expenditure shall be treated as reduced by the aggregate amount of all allowances made to him in respect of the asset for any year of assessment before that in which the appointed day falls, being allowances either—

(a) under section fifteen of the Finance Act, 1937 (which relates to the mills, factories allowance); or

(b) under section nineteen of the Finance Act, 1941 (which relates to the exceptional depreciation allowance); or

(c) under Rule 6 of the Rules applicable to Cases I and II of Schedule D (which relates to the wear and tear allowance); or

(d) under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938 (which provides for an additional allowance for wear and tear).

46. *Other amendments of s.* 29 *of Finance Act*, 1944.—(1) Any reference in section twenty-nine of the Finance Act, 1944 (which contains provisions as to assets representing capital expenditure) to expenditure of a capital nature incurred by the person carrying on a trade shall not include a reference to any expenditure except—

(a) expenditure incurred after the appointed day; and

(b) so much of any expenditure incurred on or after the first day of January, nineteen hundred and thirty-seven, and on or before the appointed day as, under the provisions of the last preceding section, is to be treated as having been incurred immediately after the appointed day.

(2) Subsection (3) of the said section twenty-nine (which relates to the destruction of assets by fire or any similar cause) shall apply in relation to the destruction of assets from whatever cause, and accordingly the words "by fire or any similar cause" are hereby repealed.

(3) Subsection (4) of the said section twenty-nine (which prevents the allowance of deductions under other provisions of the Income Tax Acts in respect of assets to which that section applies) shall not prevent the allowance of any deduction for the purpose of income tax for any year of assessment before that in which the appointed day falls.

47. *Scientific research allowances to exclude allowances under this Act.*—No initial allowance under Part I or Part II of this Act shall be made in respect

of expenditure on the provision of an asset if that expenditure is expenditure in respect of which a deduction may be allowed under section twenty-eight of the Finance Act, 1944, and subsection (4) of section twenty-nine of that Act (which prohibits the making of wear and tear and other allowances in years for which deductions are allowed under the said sections twenty-eight and twenty-nine) shall apply in relation to annual allowances under the said Part I as it applies in relation to wear and tear allowances.

PART VII—EXCEPTIONAL DEPRECIATION

48. *Extension of right to allowance.*—An exceptional depreciation allowance shall be given notwithstanding that, on the date determined by Parliament for the purposes of subsection (1) of section nineteen of the Finance Act, 1941, the buildings, machinery or plant have not become obsolete or ceased to be required, and accordingly in paragraph (a) of the said subsection (1) for the words "the buildings, machinery or plant have, wholly or partially, become obsolete or ceased to be required and the value thereof is less than the net cost thereof" there shall be substituted the words "the value of the buildings, machinery or plant, or, where the buildings, machinery or plant have ceased to exist as such, the value of the remains thereof, is less than the net cost thereof."

49. *Valuation.*—(1) Where it is material for the purposes of subsection (1) of section nineteen of the Finance Act, 1941, to ascertain the value of any buildings, machinery or plant on the date determined by Parliament for the purposes of that subsection, that value shall be ascertained as if the buildings machinery or plant were in a proper state of repair.

(2) Where an allowance under the said subsection (1) is, or, but for the provisions of this section, would be, made in respect of any buildings, machinery or plant by reference to the value thereof on the date determined by Parliament, and—

(a) on that date, the buildings, machinery or plant are not in a proper state of repair; and

(b) not later than six years after that date the buildings, machinery or plant are sold by the person who is or would be entitled to the allowance before all the repairs have been made which are necessary to make good the disrepair existing on that date; and

(c) the net proceeds of the sale are less than the value as ascertained for the purposes of the said subsection (1),

he may claim that the said value shall for those purposes be deemed to be reduced by such amount as may be just, having regard to the extent to which the said repairs have not been made good at the time of the sale:

Provided that the said value shall not be treated for the said purposes as having been reduced below the actual value of the buildings, machinery or plant in their actual state at the date determined by Parliament, or the net proceeds of the sale, whichever is the greater, plus any sums paid or payable to or for the benefit of the said person, under Part I or Part II of the War Damage Act, 1943, in respect of damage to the buildings, machinery or plant, being damage which has not been made good before the date determined by Parliament or, as the case may be, the date of the sale.

(3) In this section and in the said subsection (1), any reference to the value of buildings, machinery or plant shall be construed as a reference to the value thereof to the person carrying on the trade, or to the amount which could be obtained therefor in the open market, whichever is the higher.

(4) Nothing in this section shall apply in relation to any buildings, machinery

or plant which, on the date determined by Parliament, are no longer in existence as such.

50. *War damage.*—Paragraph (ii) of subsection (1) of section nineteen of the Finance Act, 1941 (which directs war damage payments to be taken into account in determining whether an exceptional depreciation allowance may be made, and, if so, the amount thereof) shall not apply in relation to any payments under Part I or Part II of the War Damage Act, 1943, in respect of any buildings, machinery or plant, unless—

(a) the buildings, machinery or plant have been sold before the date determined by Parliament for the purposes of that subsection or are at that date no longer in existence as such; and

(b) the said payments have been or are to be made to or for the benefit of the person who is entitled to the allowance or would be entitled to the allowance if an allowance fell to be made.

51. *Depreciation to be spread evenly.*—Any excess in respect of which an exceptional depreciation allowance falls to be made shall be deemed to have begun to accrue on the sixth day of April, nineteen hundred and thirty-nine, or the date when the buildings, machinery or plant were provided, whichever is the later, and to have continued to accrue at an even rate until the date determined by Parliament, the date on which the buildings, machinery or plant were sold, or the date on which the buildings, machinery or plant finally ceased to be used by the person to whom the allowance falls to be made, whichever is the earliest date, and the proportion of the excess properly attributable to any year shall be determined accordingly:

Provided that, in relation to a person to whom the buildings, machinery or plant have been transferred in such circumstances that they are deemed by virtue of subsection (4) of section nineteen of the Finance Act, 1941, to have been provided by him, the reference in this section to the date when the buildings, machinery or plant were provided shall be construed as a reference to the date of the transfer.

52. *Allowances under Parts I and II to be taken into account.*—The reference in paragraph (i) of subsection (1) of section nineteen of the Finance Act, 1941, to deductions for wear and tear or depreciation already allowed in respect of the buildings, machinery or plant shall be deemed to include a reference to any allowance made in respect thereof under Part I or Part II of this Act.

53. *Effect of certain sales by persons entitled to exceptional depreciation allowances and by successors of such persons.*—(1) The provisions of this section shall have effect where—

(a) any buildings, machinery or plant are sold on, before or not later than six years after the date determined by Parliament for the purposes of subsection (1) of section nineteen of the Finance Act, 1941; and

(b) the seller is a person to whom an exceptional depreciation allowance falls to be made in respect of the buildings, machinery or plant, whether by reason of the sale or otherwise; and

(c) at the time of the sale and, where the event giving rise to the allowance is not the sale, also at the time of the event, the buildings, machinery or plant are not in a proper state of repair; and

(d) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control,

or both the seller and the buyer are bodies of persons and some other person has control over both of them.

(2) No deduction shall be allowed in computing the profits or gains of any trade carried on by the buyer in respect of any expenditure incurred in making good the disrepair existing at the time of the event giving rise to the exceptional depreciation allowance, no allowance shall be made to him under any provision of this Act in respect of any capital expenditure incurred by him for that purpose, and, where the said disrepair is such as to require the provision of new machinery or plant, no allowance shall be made to the buyer under Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D in respect of machinery or plant provided to make good the disrepair.

(3) Where—

(a) the buyer under such a sale as is mentioned in subsection (1) of this section again sells the buildings, machinery or plant, or any part of them; and

(b) the second sale takes place before, on or not later than six years after the date determined by Parliament for the purposes of subsection (1) of section nineteen of the Finance Act, 1941; and

(c) the second buyer is a body of persons over whom the first buyer has control, or the first buyer is a body of persons over whom the second buyer has control, or both the first buyer and the second buyer are bodies of persons and some other person has control over both of them,

the provisions of the last preceding subsection shall, in relation to the income tax payable by the second buyer, have effect as if the second sale had been a sale by the first seller direct to the second buyer, and so on for any subsequent sales.

(4) In this section, references to a body of persons include references to a partnership, and references to the event giving rise to an exceptional depreciation allowance are references—

(a) if the allowance is made because, on the date determined by Parliament, the value of the buildings, machinery or plant is less than the net cost thereof, to that date; and

(b) if the allowance is made because the buildings, machinery or plant are sold before the said date at a price which is less than the net cost thereof, to the date of that sale.

54. *Part VII to be retrospective.*—This Part of this Act shall be deemed always to have had effect.

Part VIII—Miscellaneous and General

55. *Manner of charging tax and granting allowances in case of traders.*—(1) Any claim by a person for an allowance falling to be made to him under any of the provisions of this Act in charging the profits or gains of his trade shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains thereof, and the allowance shall be made as a deduction in charging those profits or gains, and paragraph (3) of Rule 6 of the Rules applicable to Cases I and II of Schedule D (which relates to the carrying forward of deductions allowable in respect of wear and tear of machinery or plant) and section nineteen of the Finance Act, 1932 (which provides for the carrying forward of losses for which relief cannot be given owing to the grant of relief given in respect of wear and tear of machinery or plant) shall apply in relation to the allowance as they apply in relation to deductions allowable in respect of wear and tear of machinery and plant.

(2) If, in the case of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits—

(a) a balancing allowance falls to be made under Part I of this Act for the last year of assessment during which the trade is carried on;

(b) the event giving rise to the allowance is the mine, oil well or other source ceasing to be worked or the coming to an end of a foreign concession;

(c) the allowance is in respect of expenditure on a building or structure which was constructed for occupation by, or for the welfare of, persons employed at, or in connection with the working of, the mine, oil well or other source; and

(d) full effect cannot be given to the allowance because of an insufficiency of profits or gains for the said year of assessment,

the person entitled to the allowance may claim that the balance of the allowance may be given for the last preceding year of assessment, and so on for other preceding years, so however that no allowance shall be given by virtue of this subsection for any year earlier than the fifth year before the first mentioned year of assessment.

(3) Any charge falling to be made under any of the provisions of this Act on a person for any year of assessment in charging the profits or gains of his trade shall be made by means of an assessment on the profits or gains of that trade for that year of assessment in addition to any other assessment falling to be made thereon for that year.

(4) The preceding provisions of this section shall apply in relation to professions, employments, vocations and offices and the occupation of lands the profits or gains whereof are assessable otherwise than by reference to assessable value as they apply in relation to trades.

(5) Nothing in this section applies to any deduction allowable under any provisions of this Act in computing the profits or gains of a trade.

56. *Manner of granting, and effect of allowances made by way of discharge or repayment of tax.*—(1) Where, under any of the provisions of this Act, an allowance falls to be made to a person for any year of assessment which is to be given by way of discharge or repayment of tax, and is to be available, or available primarily, against a specified class of income, the amount of the allowance shall be deducted from or set off against income of his of that class for that year of assessment, and, if the amount to be allowed is greater than the amount of his income of that class for that year of assessment, the balance shall be deducted from or set off against his income of that class for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly:

Provided that where the allowance is available primarily against income of the specified class and the amount of the allowance is greater than the amount of the person's income of that class for the first-mentioned year of assessment, he may, by notice in writing given to the surveyor not later than one year after the end of that year of assessment, elect that the excess shall be deducted from or set off against his other income for that year of assessment, and it shall be deducted from or set off against that income and tax discharged or repaid accordingly, and only the excess, if any, of the amount of the allowance over all his income for that year of assessment shall be deducted from or set off against his income of the specified class for succeeding years.

(2) Subsection (4) of section forty-two of the Finance Act, 1927 (which makes standard rate tax assessments conclusive for surtax purposes and prohibits certain allowances or adjustments being made for surtax purposes unless they have been previously made for the purposes of standard rate tax)

shall apply in relation to the allowances mentioned in this section as it applies in relation to the allowances and adjustments mentioned in that subsection.

(3) Section forty-one of the Finance Act, 1927 (which contains provisions with respect to the making and determination of claims) shall apply in relation to claims for allowances mentioned in this section as it applies in relation to claims for deductions of tax under section forty of that Act:

Provided that, except in the case of an allowance under Part IV of this Act, any such claim to which objection is made shall, if the claimant so elects when he makes the claim, be heard and determined by the Special Commissioners, and subsection (2) of the said section forty-one shall have effect accordingly.

57. *Meaning of "basis period."*—(1) In this Act, the expression "basis period" has the meaning assigned to it by the following provisions of this section.

(2) In the case of a person to or on whom an allowance or charge falls to be made in charging the profits or gains of his trade, his basis period for any year of assessment is the period on the profits or gains of which income tax for that year falls to be finally computed under Case I of Schedule D in respect of the trade in question or, where, by virtue of any Act, the profits or gains of any other period are to be taken to be the profits or gains of the said period, that other period:

Provided that, in the case of any trade—

(a) where two basis periods overlap, the period common to both shall be deemed for the purpose of this subsection to fall in the first basis period only;

(b) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then, unless the second-mentioned year of assessment is the year of the permanent discontinuance of the trade, the interval shall be deemed to be part of the second basis period; and

(c) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade is permanently discontinued and the basis period for the year in which it is permanently discontinued, the interval shall be deemed to form part of the first basis period.

(3) Where an allowance falls to be made under Part II of this Act to a person carrying on a profession or vocation, the provisions of the last preceding subsection shall apply as if the references to a trade included references to a profession or vocation and as if the reference to Case I of Schedule D included a reference to Case II of Schedule D.

(4) In the case of any other person to or on whom an allowance or charge falls to be made under this Act, his basis period for any year of assessment is the year of assessment itself.

58. *Apportionment of consideration, and exchanges and surrenders of leasehold interests.*—(1) Any reference in this Act to the sale of any property includes a reference to the sale of that property together with any other property, and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to the first-mentioned property shall, for the purposes of this Act, be deemed to be the net proceeds of the sale of the first-mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.

For the purposes of this subsection, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding

that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

(2) The provisions of the last preceding subsection shall, with the necessary adaptations, apply in relation to other sale, insurance, salvage or compensation moneys as they apply in relation to the net proceeds of sales.

(3) This Act shall have effect as if any reference therein (including any reference in the preceding provisions of this section) to the sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Act referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

(4) As respects the year in which the appointed day falls and any subsequent year of assessment, the preceding provisions of this section shall, with the necessary adaptations, have effect in relation to—

(a) Rules 6 and 7 of the Rules applicable to Cases I and II of Schedule D (which provide for a wear and tear allowance and an obsolescence allowance in the case of machinery and plant); and

(b) . . .[1]

(c) section twenty-nine of the Finance Act, 1944 (which relates to sales of assets representing expenditure on scientific research),

as if the said Rules 6 and 7 and the said section . . .[1] twenty-nine were provisions of this Act.

59. *Special provisions as to certain sales.*—(1) The provisions of this section shall have effect in relation to sales of any property where either—

(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or

(b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under any of the following enactments, that is to say, any of the provisions of this Act or of Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D or of section nineteen of the Finance Act, 1941, or of Part IV of the Finance Act, 1944.

References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section[1] [*other than the said section nineteen*] in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

[1] Words omitted, and inserted, Finance (No. 2) Act, 1945, s. 58 (2).

(3) Where the sale is a sale of machinery or plant—

(a) no initial allowance shall be made to the buyer; and

(b) subject to the provisions of the next succeeding subsection if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge:

Provided that this subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business:

Provided also that where the sale is one to which paragraph (a) of subsection (1) of this section applies and took place before the appointed day and the seller acquired the machinery or plant on or after the sixth day of April, nineteen hundred and forty-four, paragraph (a) of this subsection shall not apply.

In this subsection the expression "the limit of re-charge" means, in relation to a person who sells machinery or plant—

(i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

(ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof.

(4) Where the sale is one to which paragraph (a) of subsection (1) of this section applies and paragraph (b) of that subsection does not apply, and the parties to the sale by notice in writing to the surveyor so elect, the following provisions shall have effect:—

(a) subsection (2) of this section shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum hereinafter mentioned, whichever is the lower;

(b) paragraph (b) of subsection (3) shall not apply; and

(c) notwithstanding anything in the preceding provisions of this section, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have fallen to be made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection therewith as were done by or allowed to the buyer.

The said sum is—

(i) in the case of an industrial building or structure, the residue of the expenditure on the construction of that building or structure immediately before the sale, computed in accordance with the provisions of section four of this Act;

(ii) in the case of machinery or plant, the amount of the expenditure on the provision thereof still unallowed immediately before the sale, computed in accordance with the provisions of section nineteen of this Act;

(iii) in the case of assets representing the expenditure to which Part III

of this Act applies, the residue of the expenditure attributable to those assets immediately before the sale, computed in accordance with the provisions of the said Part III; and

(iv) in the case of patent rights, the amount of any capital expenditure on the acquisition thereof remaining unallowed, computed in accordance with the provisions of section thirty-six of this Act:

Provided that in computing the said sum in the case of any buildings, machinery or plant, any sums provisionally allowed under subsection (2) of section nineteen of the Finance Act, 1941 (which relates to exceptional depreciation allowances) shall be left out of account.

(5) As respects Rules 6 and 7 of the Rules applicable to Cases I and II of Schedule D, the provisions of this section shall have effect as respects tax for the year of assessment in which the appointed day falls and any subsequent year of assessment . . [2]

69. *Effect, in certain cases, of successions to trades, &c.*—(1) Where, on or after the appointed day, a person succeeds to any trade, profession or vocation which until that time was carried on by another person and, by virtue of any of the provisions of Rule 11 of the Rules applicable to Cases I and II of Schedule D, the trade, profession or vocation is to be treated as discontinued, any property which, immediately before the succession takes place, was in use for the purposes of the discontinued trade, profession or vocation and, without being sold, is, immediately after the succession takes place in use for the purposes of the new trade, profession or vocation, shall, for the purposes of this Act, be treated as if it had been sold to the successor when the succession takes place, and as if the net proceeds of that sale had been the price which that property would have fetched if sold in the open market:

Provided that no initial allowance shall be made under any of the provisions of this Act by virtue of the provisions of this subsection.

(2) Where, after the setting up and before the permanent discontinuance of a trade, profession or vocation which at any time is carried on in partnership, anything is done for the purposes thereof, any allowance or charge which, if the trade, profession or vocation had at all times been carried on by one and the same person, would have fallen to be made to or on him under any of the provisions of this Act, shall be made to or on the person or persons from time to time carrying on that trade, profession or vocation, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the trade, profession or vocation and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

(3) This section shall, with the necessary adaptations, apply in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D as it applies in relation to a trade.

71. *Procedure on apportionments, etc.*—(1) Where, under or by virtue of any provisions of this Act, any sum falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to income tax (for whatever year of assessment) of two or more persons, any question which arises as to the manner in which the sum is to be apportioned shall be determined, for the purposes of the income tax of all those persons—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners;

[2] See note [1], p. 791.

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Commissioners of Inland Revenue may direct unless all those persons agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as if it were an appeal against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal shall apply accordingly with any necessary modifications:

Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(2) This section applies in relation to any determination under either of the two last preceding sections of the price which property would have fetched if sold in the open market as it applies in relation to apportionments.

62. *Trade marks and designs.*—In computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining, for the purposes of the trade, the registration of a design or a trade mark or the extension of the period of copyright in a design or the renewal of registration of a trade mark.

63. *Act not to apply to excess profits tax and the national defence contribution.*—The provisions of this Act shall not apply for the purposes of excess profits tax or the national defence contribution.

64. *Interpretation of certain references to expenditure, etc.*—(1) References in this Act to capital expenditure and capital sums—

(a) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum which is allowed to be deducted in computing, for the purposes of income tax, the profits or gains of a trade, profession, office, employment or vocation carried on or held by him; and

(b) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which fall to be taken into account as receipts in computing the profits or gains of any trade, profession, office, employment or vocation carried on or held by him,

and do not include, in relation to any such person as aforesaid, any expenditure or sum in the case of which a deduction of tax falls or may fall to be made, otherwise than by virtue of the provisions of Part V of this Act relating to charges on capital sums received for patent rights, under Rule 19 or Rule 21 of the General Rules.

(2) Any reference in this Act to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question become payable.

65. *Interpretation of certain references to various allowances.*—(1) In this Act, the expression "exceptional depreciation allowance" means an allowance made under section nineteen of the Finance Act, 1941, the expression "mills, factories or exceptional depreciation allowances" means any allowance made under section fifteen of the Finance Act, 1937, or any exceptional depreciation allowances, and the expression "scientific research

allowance" means an allowance made under section twenty-eight or section twenty-nine of the Finance Act, 1944.

(2) Any reference in this Act to the relevant exceptional depreciation allowances shall be construed, in relation to any building, machinery or plant, as a reference to an exceptional depreciation allowance in respect of that building, machinery or plant or to so much of any exceptional depreciation allowance granted in respect of any building machinery or plant of which it forms part as is properly attributable to it.

(3) Any reference in this Act to the relevant mills, factories or exceptional depreciation allowances shall be construed, in relation to any building or structure, as a reference to any allowances granted under section fifteen of the Finance Act, 1937, in respect of it or premises of which it forms part, and any relevant exceptional depreciation allowances:

Provided that where an allowance under the said section fifteen was in respect of premises which include several buildings or structures, the whole amount of the allowance under the said section fifteen shall be apportioned between all the buildings or structures, and only that part of the allowance which is apportioned to the building or structure in question shall be taken into account.

(4) Any reference to the allowance made under the said section fifteen for any year of assessment shall be construed as a reference to an amount which, under the said section fifteen, is to be allowed as a deduction in computing profits or gains for that year of assessment.

(5) Any reference in this Act to an allowance made or deduction allowed includes a reference to an allowance or deduction which would be made or allowed but for an insufficiency of profits or gains, or other income, against which to make it.

66. *Subsidies.*—(1) Expenditure shall not be regarded for any of the purposes of this Act as having been incurred by any person in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by any person other than the first-mentioned person:

Provided that, in considering whether any, and, if so, what, balancing charge is to be made on a person under Part II of this Act in respect of any machinery or plant provided before the appointed day, this section shall not apply.

(2) In considering, for the purposes of subsection (1) of this section, and of any other provision of this Act referring to expenditure met or to be met directly or indirectly by the Crown or by any authority or person other than the person incurring the expenditure, how far any expenditure has been or is to be so met, there shall be left out of account—

(a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use; and

(b) any expenditure met or to be met by any person other than the Crown or a government or public or local authority, being expenditure in respect of which, apart from the provisions of this paragraph, no allowance could be made under the provisions of the next succeeding subsection.

(3) Where, on or after the appointed day, a person, for the purposes of a trade carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from the provisions of subsection (1) of this section, would have been regarded as wholly incurred by

another person and in respect of which, apart from the said provisions, an allowance would have been made under Part I, Part II, Part III or Part IV of this Act, then, subject to the provisions of the Third Schedule to this Act, such initial and annual allowances, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that trade, of a similar asset.

In this subsection and in the said Schedule, the expression "trade" includes husbandry and the occupation of woodlands in the United Kingdom in respect of which an election is in force for assessment and charge to tax under Schedule D by virtue of the provisions of the Rules applicable to Schedule B, and the expression "annual allowance" includes an allowance under Rule 6 of the Rules applicable to Cases I and II of Schedule D and an allowance under section thirty-three of this Act.

67. *Computation of expenditure for purposes of Rule 8 of No. V of Schedule A.*—In computing for the purposes of Rule 8 of No. V of Schedule A the cost to any person of maintenance, repairs, insurance and management, there shall be left out of account any expenditure incurred by him on or after the appointed day, in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority, or by any person other than the first-mentioned person.

68. *Other provisions as to interpretation*—(1) In this Act, except where the context otherwise requires—

["*the appointed day*" *means April 6th*, 1946; *see Finance* (*No. 2*) *Act*, 1945, *s.* 18.]

may hereafter determine for the purposes of that provision;

"control," in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;

"foreign concession" means a right or privilege granted by the government of, or any municipality or other authority in, any territory outside the United Kingdom;

"income" includes any amount on which a charge to tax is authorised to be made under any of the provisions of this Act;

"lease" includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and "lessee," "lessor" and "leasehold interest" shall be construed accordingly;

"mineral deposits" includes any natural deposits capable of being lifted or extracted from the earth;

"sale, insurance, salvage or compensation moneys" mean, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person or is material in determining whether any, and, if so, what, annual allowance is to be made to a person under Part III of this Act—

(a) where the event is a sale of any property, the net proceeds to that person of the sale;

(b) where the event is the coming to an end of an interest in

property on or by reason of the coming to an end of a foreign concession, any compensation payable to that person in respect of that property;

(c) where the event is the demolition or destruction of any property the net amount received by him for the remains of the property, together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; and

(d) where the event is that a building or structure ceases altogether to be used or that machinery or plant is put out of use, any compensation of any description received by him in respect of that event, in so far as that compensation consists of capital sums.

(2) Any reference in this Act to any building, structure, machinery, plant, works, asset, farm house, farm or forestry building, cottage or fence shall be construed as including a reference to a part of any building, structure, machinery, plant, works, asset, farm house, farm or forestry building, cottage or fence:

Provided that where the reference is expressed to be to the whole of a building or structure, this subsection shall not apply.

(3) Any reference in this Act or in subsection (2) of section twenty-nine of the Finance Act, 1944, to the time of any sale shall be contrued as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(4) Any reference in this Act to the setting up or permanent discontinuance of a trade includes, except where the contrary is expressly provided, a reference to the occurring of any event which, under any of the provisions of the Income Tax Acts, is to be treated as equivalent to the setting up or permanent discontinuance of a trade.

(5) Any reference in this Act or in Part IV of the Finance Act, 1944, to the overlapping of two periods shall be construed as including a reference to the coincidence of two periods or to the inclusion of one period in another, and references to the period common to both of two periods shall be construed accordingly.

(6) Except where the contrary is expressly provided or the context otherwise requires, any reference in this Act to any provision of any other Act shall be construed as a reference to that provision as amended by or under any other enactment, including this Act.

69. *Application to Scotland.*—In the application of this Act to Scotland, the expression "leasehold interest" means the interest of a tenant in property subject to a lease, and any reference to an interest which is reversionary on a leasehold interest or to a lease shall be construed as a reference to the interest of the landlord in property subject to the leasehold interest or lease.

70. *Short title and construction.*—This Act may be cited as the Income Tax Act, 1945, and shall be construed as one with the Income Tax Acts.

FIRST SCHEDULE.

APPLICATION OF PART III TO EXPENDITURE BEFORE THE APPOINTED DAY.

(Section 27.)

PART I.

Preliminary.

1. The amount of expenditure which a person who, on the appointed day, is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature is to be treated for certain purposes of Part III of this Act as having incurred on that day shall, except in the cases dealt with in Part III of this Schedule, be the amount specified in Part II thereof.

2. In the subsequent provisions of this Schedule, the said expenditure is referred to as "the appointed day expenditure" and the said person is referred to as "the trader."

PART II.

Provisions applicable where Part III of this Schedule does not apply.

3. Except in cases to which Part III of this Schedule applies, the amount of the appointed day expenditure shall be ascertained by—

(a) ascertaining the total expenditure to which Part III of this Act applies which was incurred by the trader before the appointed day for the purposes of the trade and in connection with the source; and

(b) subtracting therefrom the amounts specified in paragraph 4 of this Schedule; and

(c) applying the fraction specified in paragraph 5 of this Schedule to the result.

4. The said amounts are—

(a) where any asset representing any part of the expenditure incurred by the trader as aforesaid before the appointed day had, before the appointed day, been sold by him, the amount of the expenditure so incurred which is attributable to that asset; and

(b) where the assets representing the expenditure so incurred, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any relevant mills, factories or exceptional depreciation allowances made in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

5. The said fraction is the fraction of which—

(a) the numerator represents the total potential future output from the source, estimated as at the appointed day; and

(b) the denominator represents the sum of the total output from the source before the appointed day and the said total potential future output.

PART III.

Provisions applicable in certain cases where Assets have been Purchased from a Predecessor.

6.—(1) Where, at or about the time when the trader began to work the source, he acquired from a predecessor in the working of the source, assets

representing expenditure to which Part III of this Act applies incurred by that or any other predecessor in the working of the source, the amount of the appointed day expenditure shall be whichever of the amounts respectively specified in the two next succeeding paragraphs is the smaller.

(2) In this and the subsequent provisions of this Part of this Schedule the expression "predecessor in the working of the source" means a person who has, before the appointed day, carried on a trade which consisted of or included the working of the source but has, before that day, ceased to work it.

(3) In the subsequent provisions of this Part of this Schedule, the assets mentioned in sub-paragraph (1) of this paragraph are referred to as "the acquired assets."

7.—(1) The first of the amounts mentioned in the last preceding paragraph is the amount which results from—

(a) ascertaining the total expenditure to which Part III of this Act applies which was incurred either on the acquired assets by any predecessor in the working of the source for the purposes of his trade and in connection with that source or by the trader for the purposes of his trade and in connection with the source; and

(b) subtracting therefrom the sums specified in sub-paragraph (2) of this paragraph; and

(c) applying to the result the fraction specified in sub-paragraph (3) of this paragraph.

(2) The said sums are—

(a) where any of the acquired assets have before the appointed day been sold by the trader, so much of the said expenditure incurred by any predecessor in the working of the source as is attributable to that asset;

(b) where any asset representing any part of the expenditure incurred by the trader as aforesaid before the appointed day has, before the appointed day, been sold by him, the amount of that expenditure which is attributable to that asset; and

(c) where any of the acquired assets or any asset representing any such expenditure as aforesaid of the trader consists of buildings or structures (not being buildings or structures sold by the trader before the appointed day), any relevant mills, factories or exceptional depreciation allowances made in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

(3) The said fraction is the fraction of which—

(a) the numerator represents the total potential future output from the source, estimated as on the appointed day; and

(b) the denominator represents the sum of the total output from the source before the appointed day, and the said total potential future output.

8.—(1) The second of the said amounts is the amount which results from—

(a) adding the price paid by the trader for the acquired assets to all the expenditure to which Part III of this Act applies which he incurred for the purposes of the trade and in connection with the source between the time when he acquired those assets and the appointed day; and

(b) subtracting from the total sums specified in sub-paragraph (2) of this paragraph; and

(c) applying to the result the fraction specified in sub-paragraph (3) of this paragraph.

(2) The said sums are—

(a) where any asset representing the expenditure mentioned in paragraph (a) of sub-paragraph (1) of this paragraph has, before the appointed day, been sold by the trader, the amount of that expenditure which is attributable to that asset; and

(b) where any of the acquired assets has, before the appointed day been sold by the trader, the price paid by the trader for the asset; and

(c) where the assets representing that expenditure, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any relevant mills, factories or exceptional depreciation allowances made to him in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

(3) The said fraction is the fraction of which—

(a) the numerator represents the total potential future output of the source, estimated as at the appointed day; and

(b) the denominator represents the sum of the total output from the source between the date of the acquisition of the acquired assets and the appointed day and the said total potential future output.

SECOND SCHEDULE.

Effect of Deaths, Windings Up and Partnership Changes on Certain Charges in Respect of Patent Rights.

(Section 37.)

1. Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under the principal section dies or, being a body corporate, commences to be wound up—

(a) no sums shall be charged under the principal section on that person for any year subsequent to that in which the death takes place or the winding up commences; and

(b) the amount falling to be charged for the year in which the death occurs or the winding up commences shall be increased by the total amounts which but for the death or winding up would have fallen to be charged for subsequent years:

Provided that, in the case of a death, the personal representatives may, by notice in writing served on the surveyor not later than twenty-one days after notice has been served on them of the charge falling to be made by virtue of this paragraph, require that the income tax (including surtax) payable out of the estate of the deceased by reason of the increase provided for by this paragraph shall be reduced so as not to exceed the total amount of income tax (including surtax) which would have been payable by him or out of his estate by reason of the operation of the principal section in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by the said whole amount divided by the number of those years.

2. Where, under the provisions of Part VIII of this Act relating to partnerships, a charge under the principal section falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, the provisions of paragraph 1 of this Schedule

shall have effect in relation to the discontinuance as they have effect where a body corporate commences to be wound up:

Provided that—

(a) the additional sum which, under the said paragraph, falls to be charged for the year in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) charged separately for his proportion; and

(b) each of the partners, or, if he is dead, his personal representatives, shall have the same right to require a reduction of the total income tax (including surtax) payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under the said paragraph 1 in the case of a death, and the proviso to the said paragraph shall have effect accordingly, but as if references to the amount of income tax (including surtax) which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax (including surtax) which would in that event have fallen to be paid by the partner in question or out of his estate.

3. In this Schedule, any references to the income tax (including surtax) paid or borne or payable or falling to be paid or borne by a person include, in cases where the profits of a wife are deemed to be the profits of the husband, references to the income tax (including surtax) paid or borne, or payable or falling to be paid or borne, by his wife or her husband, as the case may be.

THIRD SCHEDULE.

SUPPLEMENTARY PROVISIONS AS TO ALLOWANCES FOR CONTRIBUTIONS TOWARDS THE EXPENDITURE OF OTHER PERSONS.

(Section 66.)

1. Subject to the provisions of this Schedule, the amount of the allowances and the manner in which they are to be made shall be determined on the following basis—

(a) the asset shall be deemed to continue at all material times to be in use for the purposes of the trade;

(b) where the asset is machinery or plant and, when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery or plant to the said tenant on such terms that the burden of the wear and tear thereof falls directly on the contributor.

2. Where, when the contribution was made, the trade for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the trade or any part of the trade—

(a) where the transfer is of the whole trade, the annual allowance for the year of assessment in which the transfer takes place and all subsequent years of assessment shall be made to the transferee;

(b) where the transfer is of part only of the trade, the provisions of the preceding sub-paragraph shall have effect with respect to so much

of the allowance as is properly referable to the part of the trade transferred.

3.—(1) Where, when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor had an interest, the annual allowance for any year of assessment shall be made to the person who, at the end of that year, is entitled to the contributor's interest in the land, and the provisions of this Act defining, for the purposes of Part I thereof, the expression "the relevant interest" shall, with the necessary modifications, apply in relation to a contribution made for the purposes of a trade carried on or[1] be carried on by a tenant of land as they apply in relation to expenditure incurred on the construction of a building or structure.

(2) Subsection (2) of section two of this Act (which relates to the effect of sales on the amount of annual allowances) shall not apply in relation to annual allowances to be made in respect of contributions.

4. The two last preceding paragraphs shall not apply where the trade is husbandry in the United Kingdom or the occupation of woodlands in the United Kingdom, and in lieu thereof the provisions of subsection (4) of section thirty-three of this Act (which relate to the effect of transfers of land) shall apply with any necessary modifications.

[1] *Sic.* Query, insert "to"?

APPENDIX 2

REGULATIONS

SUR-TAX

REGULATIONS, DATED AUGUST 4, 1928, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTIONS 7 (8) AND 220 (8) (a) OF THE INCOME TAX ACT, 1918, AND SECTION 42 (8) OF THE FINANCE ACT, 1927. (STAT. R. & O. 1928, No. 610.)

1. Any notice which the Special Commissioners may serve upon any person under Sub-section (2) of Section 44 of the Finance Act, 1927, or under Sub-section (2) of Section 17 of the Finance Act, 1928, shall be in such form as the Commissioners of Inland Revenue shall approve.

2. On the making of an assessment in respect of Sur-tax by the Special Commissioners, they shall cause notice to be served on the person assessed of the amount of the assessment.

3. Any notice which the Special Commissioners may serve upon any person under Sub-sections (1) or (2) of Section 33, or under Sub-section (2) of Section 44 of the Finance Act, 1927, or under Sub-section (2) of Section 17 of the Finance Act, 1928, and any notice required to be served upon any person under paragraph 2 of these Regulations may be sent by post by letter addressed to such person at his usual or last known place of abode.

4. Sur-tax shall be assessed and charged at the office of the Special Commissioners, London, and appeals shall be heard in London, Edinburgh and Belfast, and at such other towns as the Commissioners of Inland Revenue may direct.

5. A person aggrieved by an assessment to Sur-tax made upon him shall at any time within 28 days from the date of the service of the notice of such assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the assessment, and every such notice shall specify the grounds of appeal.

6. The Sur-tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue at his office, Somerset House, London, W.C.2.

7. Any notice of charge, notice of apportionment or other notice which the Special Commissioners are, by virtue of Section 21 of the Finance Act, 1922, or the First Schedule to that Act, (as amended by Section 31 and Section 32 of the Finance Act, 1927), authorised or required to serve upon a company, may be sent by post by letter addressed to the secretary of such company at its registered office.

8. Any notice of charge or other notice which the Special Commissioners are, by virtue of Section 21 of the Finance Act, 1922, or the First Schedule to that Act, (as amended by Section 31 and Section 32 of the Finance Act, 1927), authorised or required to serve upon a member of a company or any person in whose name any shares of a company are registered may be sent by post by letter addressed to such member or person at his usual or last known place of abode.

9. Where the Special Commissioners under Sub-section (2) of Section 18 of the Finance Act, 1928, require a company to furnish further particulars, or where under Sub-section (3) (a) of the said Section they intimate to a company their intention to take further action as referred to in that Sub-section, they shall notify such requirement or intention by notice in writing, and such notice may be sent by post by letter addressed to the secretary of such company at its registered office.

10. Any notice which the Special Commissioners are, by virtue of Sub-section (5) of Section 31 of the Finance Act, 1927, authorised to serve upon the liquidator of a company may be sent by post by letter addressed to such liquidator at his address for the purposes of the liquidation of the company, or at his usual or last known place of business or place of abode.

11. Where the Special Commissioners under Sub-section (1) of Section 22 of the Finance Act, 1922, require any individual to furnish to them such particulars as are referred to in that Sub-section, or where, under paragraph 8 of the First Schedule to the Finance Act, 1922, they require any member of a company to make an amended statement of his total income, they shall notify the individual or member of such requirement by notice in writing and such notice may be sent by post by letter addressed to such individual or member at his usual or last known place of abode.

12. Any notice authorised or required to be given by the Special Commissioners under any of the enactments hereinbefore mentioned or these Regulations, may be signed by their Clerk or any person authorised by them in that behalf.

13. In these Regulations the expression "sent by post" means service by post as defined by Section 26 of the Interpretation Act, 1889.

. . . . . .

SUPERANNUATION FUNDS

REGULATIONS DATED NOVEMBER 10, 1921, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 32 OF THE FINANCE ACT, 1921 (11 & 12 GEO. 5, c. 32). (STAT. R. & O. 1921, No. 1699.)

1. Application for the approval of any fund or any part of a fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to H.M. Inspector of Taxes for the district in which the office of the fund is situated or the fund is administered and shall be supported by a copy of the instrument under which the fund is established and two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up and such other information as the Commissioners may reasonably require.

2. Any alteration in the rules, constitution, objects, or conditions of the fund made at any time after the date of the application for approval shall be notified forthwith to the Inspector. In default of such notification, any approval given shall, unless the Commissioners otherwise determine, be deemed to have been withdrawn at the date from which the alteration had effect.

3. If the facts in regard to any fund or part of a fund shall, in the opinion of the Commissioners, cease to warrant the continuance of their approval under the above-mentioned section then and in such case the Commissioners may withdraw their approval and shall give notice to the trustees of the fund of such withdrawal, and of the date from which such withdrawal is to take effect.

4. If a fund or a part of a fund is approved by the Commissioners the fact shall be communicated to the trustees of the fund in writing and where a fund or part of a fund is approved subject to conditions these conditions shall also be communicated to the trustees of the fund in writing.

5. The expression "ordinary annual contribution" shall mean an annual contribution of a fixed amount or an annual contribution calculated on some definite basis by reference to the earnings, contributions or numbers of the members of the fund.

6. The amount of the employer's contribution which may be deducted as an expense in the case of a local authority which is assessable to income tax in respect of the profits of a trade shall be such part of the authority's total contribution as is made in respect of the persons employed in such trade, and in the case of any other employer shall not exceed the amount contributed by him in respect of the persons employed by him in the trade in respect of the profits of which he is assessable to United Kingdom Income Tax.

7. Where contributions (including interest on contributions, if any) are repaid to the employer the trustees of the fund shall deduct income tax from the amount so repaid at the rate in force for the year in which the repayment is made and such amount shall be deemed for purposes of income tax, super tax and corporation profits tax to be income of the recipient for that year; the tax so deducted shall be a debt from the trustees of the fund to the Crown and recoverable as such accordingly, and the provision contained in Section 2 of the Act of 54 and 55 Victoria, c. 38, in relation to money in the hands of any person for stamp duty shall apply to the tax so deducted.

8. Where any contributions (including interest on contributions, if any) are repaid to an employed person during his lifetime or where a lump sum is paid in commutation of or in lieu of an annuity, income tax on the amount so repaid or paid shall, except in the case of an employed person whose employment was carried on abroad, *and in the case of a person who is the widow, child or dependant of an employed person whose employment was carried on abroad,*[1] be paid by the trustees of the fund who shall make such payment at the rate of *one-fourth* the standard rate in force for the year in which the repayment or payment is made, and the said tax shall be a debt due from the trustees of the fund to the Crown and recoverable accordingly.

9. Where annuities are paid by a superannuation fund to persons residing out of the United Kingdom, income tax in respect of such annuities shall be deducted and accounted for by the trustees of the fund under Rule 21 of the General Rules applicable to Schedules A, B, C, D and E of the Income Tax Act, 1918, provided that income tax shall not be required to be deducted and accounted for in the case of a person so resident whose employment was carried on abroad, *or who is the widow, child or dependant of an employed person whose employment was carried on abroad.*[1]

10. The trustees or other persons having the management of a superannuation fund and an employer who contributes to a superannuation fund shall, when

[1] Amending Regulations, dated July 29 1921: S. R. & O. 1921, No. 638.

required by notice from the Inspector within fourteen days from the date of such notice—

(a) furnish to the Inspector a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Inspector a return containing—

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payable to each annuitant,

(iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employed persons, and

(iv) particulars of sums paid in commutation or in lieu of annuities;

(c) furnish to the Inspector a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up together with such other information and particulars as the Commissioners may reasonably require.

11. Where an employer deducts from the emoluments paid to an employed person or pays on his behalf any contribution of that employed person to a superannuation fund he shall include particulars of such deduction or payment in any return of wages and salaries which he is required to furnish under Section 105 of the Income Tax Act, 1918, or the regulations made thereunder.

12. A claim for relief in respect of income derived from the investments or deposits of a superannuation fund shall be made and signed by the trustees of the fund and all the provisions of the Income Tax Acts which relate to claims for any allowance or deduction or the proof to be given with respect to those claims shall apply to claims for relief under Section 32 of the Finance Act, 1921, and the proof to be given with respect to those claims. Any tax for which the trustees of the fund are required to account may be set off in the settlement of such claim.

13. If a fund or part of a fund for any reason ceases to be an approved fund the trustees of the funds shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation of or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of a fund ceased to be an approved fund, and the provisions of Regulations 7 and 8 shall apply, with the necessary modifications.

TAX FREE PAYMENTS

THE TAX FREE PAYMENTS (TRANSITIONAL PROVISIONS) REGULATIONS, 1941, DATED SEPTEMBER 24, 1941, MADE BY THE TREASURY UNDER SECTION 27 (2) OF THE FINANCE ACT, 1941. (STAT. R. & O. 1941, No. 1476.)

1. These Regulations may be cited as the Tax Free Payments (Transitional Provisions) Regulations, 1941.

2. The Interpretation Act, 1889, shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

3. Where under any such provision as is mentioned in subsection (1) of section twenty-five of the Finance Act, 1941, any payment to which that section applies was, before the passing of that Act, made to any person (hereinafter referred to as "the original payee") and the amount of the payment was not reduced in the manner specified in that section, then, unless it is otherwise agreed after the making of these Regulations, the reduction, or, where there has been more than one such payment, the total reduction, which that section would have authorised if it had become law on the 5th April, 1941 (hereinafter referred to as "the authorised reduction"), shall in so far as it has not been recovered before the making of these Regulations, be recoverable by the payor in accordance with these Regulations and not otherwise.

4.—(1) This Regulation shall apply in the case of payments forming part of a series of payments payable under the same provision.

(2) Unless and until the authorised reduction has been made good, there shall be deducted from each payment of the series falling due after the making of these Regulations and before the 22nd July, 1942, being a payment payable to the original payee or to any person claiming through or under him, an amount not exceeding nine twenty-ninths of what would have been the amount of that payment if section twenty-five of the Finance Act, 1941, had not passed:

Provided that any amount which might have been but was not deducted under this paragraph may be recovered by the payor from the person to whom the payment was made in any way in which a simple contract debt would be recoverable.

(3) If the series has come to an end before the making of these Regulations or comes to an end before the 22nd July, 1942, the amount which would have been deductible under paragraph (2) of this Regulation from any payment of that series if it had continued may, at any time after that payment would have been due, be recovered from the original payee or his personal representatives in any way in which a simple contract debt would be recoverable.

(4) If the payments of the series have before the making of these Regulations become payable to a person who is not the original payee or a person claiming through or under him, or, if the payments of the series become payable to such a person before the 22nd July, 1942, the amount which would have been deductible under paragraph (2) of this Regulation from any payment of that series if the payments thereof were still payable to the original payee, may, at any time after that payment becomes due, be recovered from the original payee or his personal representatives in any way in which a simple contract debt would be recoverable.

(5) Any part of the authorised reduction which is not recoverable under the foregoing provisions of this Regulation may be recovered at any time after the 22nd July, 1942, from the original payee or his personal representatives in any way in which a simple contract debt would be recoverable.

5. In any case to which the last preceding Regulation does not apply, any part of the authorised reduction not previously recovered may, at any time after the making of these Regulations, be recovered from the original payee or his personal representatives in any way in which a simple contract debt would be recoverable.

U.S.A. SECURITIES

THE U.S.A. SECURITIES (INCOME TAX RELIEF) REGULATIONS, 1941, DATED OCTOBER 10, 1941, MADE BY THE TREASURY UNDER SECTION 2 (7) OF THE FINANCIAL POWERS (U.S.A. SECURITIES) ACT, 1941 (4 & 5 GEO. 6. c. 36). (STAT. R. & O. 1941, No. 1563.)

1. Where a payment is made under section two of the Financial Powers (U.S.A. Securities) Act, 1941, in respect of any income arising from securities or other possessions out of the United Kingdom, a person who is chargeable to income tax in respect of such income so far only as that income has been received in or remitted to the United Kingdom shall not be chargeable to income tax in respect of the payment except to the extent that it becomes available for use in the United Kingdom.

2. For the purposes of these Regulations no part of any such payment as aforesaid which has been remitted abroad immediately on the receipt thereof shall be deemed to have become available for use in the United Kingdom.

3. Where a payment is made under the said section two to or for the account of any such person as aforesaid in respect of any income arising from securities or other possessions out of the United Kingdom, then, to the extent that Regulation two of these Regulations does not apply, income tax shall be assessed in respect of that income in all respects as if these Regulations had not been made; but, if the Commissioners of Inland Revenue are satisfied in respect of any such payment that it has been retained by that person in the United Kingdom, either in a special bank account or in identified investments, for the purpose only of subsequent remittance abroad not later than the end of the six months next following the date on which the Defence (Finance) Regulations, 1939, cease to have effect, no steps shall be taken for the recovery of the income tax corresponding to the payment, unless and until, in the opinion of the said Commissioners, the condition is no longer satisfied that the payment is available to that person for remittance abroad:

Provided that—

(a) if, without the said condition previously ceasing, in the opinion of the said Commissioners, to be satisfied, the payment is remitted abroad before the end of the said six months, the assessment shall be discharged; and

(b) where the assessment is not so required to be discharged, the suspension of the right to recover the income tax corresponding to the payment shall in no case continue after the end of the said six months.

The provisions of this Regulation shall, with any necessary modifications, apply with respect to a part of a payment as they apply with respect to a payment.

4. These Regulations may be cited as the U.S.A. Securities (Income Tax Relief) Regulations, 1941.

POST-WAR CREDIT

THE POST-WAR CREDIT (INCOME TAX) REGULATIONS, 1942, DATED JUNE 9, 1942, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 7 OF THE FINANCE ACT, 1941 (4 & 5 GEO. 6. c. 30). (STAT. R. & O. 1942, No. 1476.)

1 These Regulations may be cited as the Post-War Credit (Income Tax) Regulations, 1942.

2.—(1) In these Regulations the expression "post-war credit" means the amount of income tax ascertained and recorded in relation to any individual under subsection (1) of Section 7 of the Finance Act, 1941. Other expressions have the same meaning as in the Income Tax Acts.

(2) The Interpretation Act, 1889, shall apply to these Regulations as it applies to an Act of Parliament.

3. (*Ascertainment, etc. of post-war credit.*)—The post-war credit shall be ascertained and recorded by the Inspector of Taxes, who shall issue to the individual a certificate of the amount recorded in his favour.

4. (*Amendment.*)—If after issuing a certificate the Inspector discovers that the amount recorded is incorrect, by reason of any amendment of the individual's liability to income tax for the relevant year or otherwise, he shall amend the record and issue an amended certificate to the individual.

5. (*Appeals.*)—(1) If the individual considers that the amount recorded is incorrect he may appeal on giving notice in writing to the Inspector, stating the grounds of the appeal, within three months of the date of the certificate or amended certificate:

Provided that the right of appeal under this Regulation shall not extend to any matter with respect to which there is a right of appeal under any provision of the Income Tax Acts other than Section 7 of the Finance Act, 1941.

(2) On receipt of such a notice as aforesaid the Inspector may determine the appeal by agreement with the appellant. In default of such agreement the appeal shall be referred to the General Commissioners of Income Tax for the division in which the appellant was assessed to income tax for the year to which the certificate or amended certificate relates or for the division in which he resides, or, if he is resident outside Great Britain, to the Special Commissioners.

(3) The General or Special Commissioners shall hear and determine every appeal so referred to them in like manner as in the case of an appeal against an assessment to income tax under Schedule D, and the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

(4) If the amount recorded is varied on appeal the Inspector shall make the necessary amendment of the record and issue an amended certificate to the individual.

6. (*Apportionment between husband and wife.*)—(1) The following provisions of this Regulation shall have effect in cases where the condition mentioned in paragraph (a) of subsection (2) of Section 7 of the Finance Act, 1941, is fulfilled.

(2) The application mentioned in paragraph (b) of the said subsection shall be made in writing to the Inspector within three months of the date of the certificate or such further time as the Commissioners of Inland Revenue may allow, and shall state the wife's full name and the sources of her income for the year to which the application relates.

(3) If the man and his wife wish the post-war credit to be divided between them in proportions as to which they are agreed, the application shall also state the amount of the post-war credit which is to be credited to the wife and shall be signed by both of them. The Inspector shall record the amount to be credited to each of them in accordance with the application, and shall issue to each of them a certificate of the amount so recorded in his or her favour.

(4) In the case of an application to which the preceding paragraph does not apply, the Inspector shall determine the proportions in accordance with the said subsection and shall record the amount to be credited to the man and his wife respectively and shall issue to each of them a certificate of the amount so recorded in his or her favour. Both the man and his wife shall furnish the Inspector with such information regarding their respective incomes as he may require for the purpose of the determination.

(5) A man or his wife who is aggrieved by the determination of the Inspector under the preceding paragraph may appeal against it by giving notice in writing to the Inspector within one month of the date of the certificates mentioned in that paragraph, and paragraphs (2) and (3) of Regulation 5 shall apply in relation to any such appeal, subject to the modifications that

(a) the Inspector shall not determine the appeal without the agreement of both the man and his wife;

(b) at a hearing by the Commissioners in default of such agreement both of them shall be entitled to be heard and the Commissioners' determination shall be binding on both of them;

(c) if any question arises as to the body of Commissioners by whom the appeal is to be heard and determined it shall be heard and determined by such body of Commissioners as the Commissioners of Inland Revenue may direct.

(6) If the Inspector's determination under paragraph (4) of this Regulation is varied on appeal the Inspector shall amend the amounts recorded in accordance with the determination of the appeal and shall issue amended certificates to the man and his wife.

(7) If the record is amended under Regulation 4 or Regulation 5 anything previously done under this Regulation shall be of no effect but a further application may be made under this Regulation.

EMPLOYMENTS

THE INCOME TAX (EMPLOYMENTS) REGULATIONS, 1944, DATED MARCH 9, 1944, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 2 OF THE INCOME TAX (EMPLOYMENTS) ACT 1943 (6 & 7 GEO. 6, C. 45). (STAT. R. & O. 1944, No. 251.)

PART I.—GENERAL

1. *Citation.*—These Regulations may be cited as the Income Tax (Employments) Regulations, 1944.

2. *Interpretation.*—(1) In these Regulations, unless the context otherwise requires—

"code" means any part of the tax tables in which all the amounts of tax have been calculated on the basis of the same amount of relief from income tax for the year, exclusive of earned income relief and reduced rate relief;

"Collector" means a Collector of Taxes;

"cumulative emoluments", in relation to any date, means the sum of all payments of emoluments made by the employer to the employee from the beginning of the year up to and including that date,

"cumulative tax" means the tax due in respect of any cumulative emoluments according to the appropriate code at the relevant date;

"emoluments" means emoluments to which the Income Tax (Employments) Act, 1943, as extended by the Income Tax (Offices and Employments) Act, 1944, applies, and references to payments of emoluments include references to payments on account of emoluments;

"employee" means any person in receipt of emoluments;

"employer" means any person paying emoluments, whether on his own account or on behalf of another person;

"income tax month" means the period beginning on the sixth day of any calendar month and ending on the fifth day of the following calendar month;

"Inspector" means an Inspector of Taxes;

"reliefs from income tax" includes allowances and deductions;

"tax deduction card" means a tax deduction card in the form prescribed by the Commissioners of Inland Revenue or such other document corresponding to a tax deduction card as may be authorised by those Commissioners in any particular case;

"tax tables" means the tax tables prepared by the Commissioners of Inland Revenue under Section 2 of the Income Tax (Employments) Act, 1943, and "simplified tax tables" means such of the said tax tables as are prescribed by those Commissioners for use where, under Regulations 21 and 22, tax is deductible without reference to cumulative emoluments and cumulative tax;

"total net tax deducted" means, in relation to the emoluments paid to any employee during any period, the total tax deducted from those emoluments less any tax repaid to the employee;

"year" means year of assessment;

other expressions have the same meaning as in the Income Tax Acts.

(2) The Interpretation Act, 1889, shall apply to these Regulations as it applies to an Act of Parliament.

3. *Intermediate employers.*—(1) Where an employee works under the general control and management of a person who is not his immediate employer, that person (referred to hereafter in this Regulation as "the principal employer") shall be deemed to be the employer for the purpose of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee's emoluments as may be necessary to enable the principal employer to comply with the provisions of these Regulations.

(2) If the employee's emoluments are actually paid to him by the immediate employer—

(a) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted or repaid when the emoluments are paid to the employee, and shall deduct or repay the amount so notified to him accordingly; and

(b) the principal employer shall make a corresponding deduction or addition on making to the immediate employer the payment out of which the said emoluments will be paid.

4. *Powers of Inspector and Collector.*—Subject to the provisions of Regulation 5, anything which is authorised or required by these Regulations to be done by the Inspector or Collector shall be done by such Inspector or Collector respectively as the Commissioners of Inland Revenue may direct.

5. *Income Tax (Employments) Officers.*—The Inspector may appoint Income Tax (Employments) Officers from the members of the staff of his office to carry out such duties in connection with these Regulations as he may assign to them.

6. *Service by post.*—Any notice or tax deduction card which is authorised or required to be given, served or issued under these Regulations may be sent by post.

PART II.—CODING

7. *Deduction and repayment of tax under appropriate code.*—Every employer, on making any payment of emoluments during any year to any employee in respect of whom a tax deduction card has been issued to him for that year by the Inspector, shall deduct or repay tax in accordance with these Regulations by reference to the appropriate code, which shall be specified on the tax deduction card.

8. *Determination of appropriate code by Inspector.*—(1) The appropriate code shall be determined by the Inspector, who for that purpose may have regard to any of the following matters, namely—

(a) the reliefs from income tax to which the employee is entitled for the year in which the code is determined, so far as his title to those reliefs has been established at the time of the determination:

Provided that, where the code is determined before the beginning of the year for which it is to have effect, the Inspector shall disregard any such relief if he is not satisfied that the employee will be entitled to it for that year;

(b) any income of the employee (other than the emoluments in relation to which the appropriate code is being determined), the tax on which for the year for which the code is to have effect will be reduced by any relief;

(c) any tax overpaid for any previous year, including a year before the year 1944—45, which has not been repaid;

(d) any tax remaining unpaid for any previous year, including a year before the year 1944—45, which is not otherwise recovered;

(c) such other adjustments as may be necessary to secure that, so far as possible, the tax in respect of the employee's emoluments for the year for which the code is to have effect shall be deducted from the emoluments paid during that year.

(2) The Inspector may disregard part or all of any expenses in respect of which the employee is entitled to relief from income tax if it is impracticable to take account of all those expenses in determining the appropriate code, and where he does so he shall direct the employer to disregard an equivalent amount of the employee's emoluments in calculating the tax to be deducted or repaid when any payment of emoluments is made to the employee.

9. *Coding at standard rate or where no tax is deductible.*—(1) The Inspector may determine that tax shall be deducted at the standard rate from any emoluments if—

(a) all the reliefs from income tax to which the employee is entitled will go to reduce the tax on income of his other than those emoluments; *or*

(b) the reliefs which will go to reduce the tax on those emoluments are offset by an adjustment in respect of tax remaining unpaid for a previous year.

(2) The Inspector may determine that no tax shall be deducted from any emoluments if—

(a) the emoluments will be included in an assessment under Schedule D; or

(b) the Inspector is not satisfied that the emoluments will be chargeable to tax.

(3) Where the Inspector has determined that tax shall be deducted at the standard rate, or that no tax shall be deducted, he shall be deemed to have determined the appropriate code, and all the provisions of these Regulations which relate to objections and appeals against the Inspector's determination, or to deduction of tax by reference to the appropriate code, or to the specification of the appropriate code in any tax deduction card, return or certificate, shall, with the necessary modifications, have effect accordingly.

10. *Notices of coding.*[1]—After the Inspector has determined the appropriate code he shall give notice of his determination to the employee before the tax deduction card is issued to the employer.

Provided that no such notice need be given for the year 1945—46 if the appropriate code as determined by the Inspector for that year is the same as for the year 1944—45.

11. *Objections and appeals against coding.*—(1) If the employee is aggrieved by the Inspector's determination he may give notice of objection to the Inspector, stating the grounds of his objection, within twenty-one days of the date on which the determination was notified to him.

(2) On receipt of the notice of objection the Inspector may amend his determination by agreement with the employee, and in default of such agreement the employee, on giving notice to the Inspector, may appeal to the General Commissioners for the division in which he resides or, in Northern Ireland or in the case of a non-resident employee, to the Special Commissioners.

(3) The General or Special Commissioners on appeal shall determine the appropriate code having regard to the same matters as the Inspector may have regard to when the appropriate code is determined by him, and, subject to the provisions of Regulation 12, their determination shall be final.

[1] As amended, Employments (No. 3) Regulations, 1945, Stat. R. & O., 1945, No. 365.

(4) The tax deduction card may be issued to the employer, and the appropriate code as determined by the Inspector may be specified thereon, notwithstanding that the Inspector's determination is the subject of an objection or appeal, and where the tax deduction card is so issued the employer shall deduct or repay tax by reference to that code.

12. *Changes in circumstances affecting coding.*—If the employee shows that the code determined by the Inspector or the Commissioners has ceased to be appropriate to his case owing to a change in the circumstances by reference to which it was determined, the Inspector shall amend the previous determination by reference to the changed circumstances, and in any such case the provisions of Regulation 11 regarding objections and appeals shall apply in relation to the amended determination as they applied in relation to the previous determination.

13. *Notice to employer of amended coding.*—Where a determination of the Inspector or the Commissioners is amended after the tax deduction card has been issued, the Inspector shall give notice to the employer specifying the code appropriate to the employee's case under the amended determination, and, on making any payment of emoluments to the employee after the receipt of the said notice, the employer shall deduct or repay tax by reference to that code.

14. *Code determined before date of Regulations.*—Where the appropriate code for the year 1944—45 has been determined by the Inspector before the date of these Regulations, it shall be deemed to have been determined under the provisions of these Regulations, and any notice of any such determination given before the said date shall be deemed to have been given under those provisions; but no objection to any such determination shall be invalid by reason only that it was not notified to the Inspector within twenty-one days of the date of the aforesaid notice.

Part III.—Deduction and Repayment of Tax

15. *Calculation of deduction or repayment.*[2]—(1) On the occasion of any payment of emoluments to the employee, the employer, except where these Regulations otherwise provide, shall ascertain the cumulative emoluments of the employee at the date of the payment and the corresponding cumulative tax.

(2) If the said cumulative tax exceeds the cumulative tax corresponding to the employee's cumulative emoluments at the date of the last preceding payment of emoluments (hereafter in this Regulation referred to as "the previous cumulative tax"), the employer shall deduct the excess from the emoluments on making the payment in question.

(3) If the said cumulative tax is less than the previous cumulative tax, the employer shall repay the difference to the employee on making the payment in question.

(4) If the said cumulative tax is equal to the previous cumulative tax, no tax shall be either deducted or repaid when the payment in question is made.

(5) Where the payment in question is the first payment in the year, paragraphs (2), (3) and (4) of this Regulation shall not apply, but the employer shall deduct the said cumulative tax from the emoluments on making the payment in question.

[2] As amended, Employments (No. 3) Regulations, 1945, Stat. R. & O., 1945, No. 895.

(6) The employer shall record, either on the tax deduction card or in such other form as may be authorised by the Commissioners of Inland Revenue, the following particulars regarding every payment of emoluments which he makes to the employee, namely—

(a) the date of the payment;
(b) the gross amount of the emoluments;
(c) the cumulative emoluments in relation to the said date;
(d) the corresponding cumulative tax; and
(e) the amount of tax, if any, deducted or repaid on making the payment.

(7) Where the Inspector determines that tax shall be deducted at the standard rate from any emoluments, or that no tax shall be deducted therefrom, the foregoing provisions of this Regulation shall not apply, but the employer shall deduct tax at the standard rate, or shall deduct no tax, as the case may require, without regard to the employee's cumulative emoluments or the corresponding cumulative tax, and, where tax is deductible at the standard rate, shall record the date of the payment, the gross amount of the emoluments and the amount of tax deducted therefrom:

Provided that, where the Inspector's determination that no tax shall be deducted is an amended determination, the employer shall, if the Inspector so directs, make any repayment of tax which may be due by reference to the employee's cumulative emoluments and the corresponding cumulative tax, and shall record the particulars prescribed in paragraph (6) of this Regulation.

16. *Emoluments not paid weekly or monthly.*—Where emoluments are paid at regular intervals other than regular intervals of a week or a month, any payment of such emoluments shall be deemed for the purposes of these Regulations to be made on the date on which it would have been made if a payment had been made on the last day of the preceding year:

Provided that the employer shall record the actual date of every such payment.

17. *Subsidiary emoluments of employee paid monthly, etc.*—(1) If the employer makes a payment in respect of overtime or other extra earnings to an employee whose main emoluments are paid monthly, and that payment is made at an earlier date in the income tax month than the date on which the main emoluments are paid, the employer shall repay no tax to the employee on the occasion of that payment, notwithstanding that tax may be repayable under the provisions of Regulation 15, but in such a case Regulation 15 shall have effect as if that payment was made on the same date in that income tax month as the date on which the main emoluments are paid.

(2) The foregoing provisions of this Regulation shall apply with the necessary modifications to payments in respect of overtime or other extra earnings which are made to an employee whose main emoluments are paid at intervals greater than a month.

18. *Deduction in special cases.*—(1) This Regulation applies to—

(a) payments of emoluments made on the 5th April in any year to an employee who is paid weekly;
(b) payments of emoluments made to an employee after he has ceased to be employed by the person making the payment; and
(c) any other payments of emoluments made to any employee to which the Inspector directs that this Regulation shall apply.

(2) Regulation 15 shall not apply to payments of emoluments to which this Regulation applies, and on making any such payment the employer shall deduct therefrom, by reference to the appropriate code, the amount

of tax which would have been deductible therefrom if the payment had been made on the preceding 6th April.

(3) On making any such payment as aforesaid the employer shall record, either on the tax deduction card or in such other form as may be authorised by the Commissioners of Inland Revenue, the date of the payment, the gross amount of the emoluments, and the amount of tax, if any, deducted therefrom.

19. *Change of employment.*—(1) If the employer ceases to employ an employee in respect of whom a tax deduction card has been issued to him, he shall forthwith send to the Inspector a certificate on the prescribed form containing the following particulars, namely—

(a) the name of the employee;
(b) any number used to identify the employee;
(c) the date on which the employment ceased;
(d) the code appropriate to the employee's case;
(e) the week or income tax month in which the last payment of emoluments was made to the employee, or in a case falling within Regulation 16 was deemed to be so made, and the cumulative emoluments at the date of that payment; and
(f) the corresponding cumulative tax.

(2) The employer shall make on the prescribed form two copies of the said certificate, and shall deliver them to the employee on the day on which the employment ceases.

(3)[a] Immediately on commencing his next employment the employee shall deliver the two copies of the certificate to his new employer, who shall, subject to the provisions of paragraph 3A of this Regulation—

(a) insert on one copy of the certificate the address of the employee, any number used to identify him, and the date on which the employment commenced, and forthwith send that copy to the Inspector by whom tax deduction cards are ordinarily issued to him;
(b) prepare a tax deduction card in accordance with the particulars given in the copies of the certificate; and
(c) on making any payment of emoluments to the employee, deduct or repay tax by reference to the appropriate code in accordance with Regulation 15, and keep the records required by that Regulation, as if the cumulative emoluments and cumulative tax shown on the copies of the certificate represented emoluments paid to the employee by the new employer and tax deducted by him:

Provided that, if tax is repayable on the occasion of the first such payment, and the amount repayable exceeds one pound, the new employer shall forthwith notify the Inspector and shall not make the repayment until authorised to do so by the Inspector.

(3A) Where the date of the last payment of emoluments shown on the two copies of the certificate was in the year preceding that in which the new employment commences, the new employer shall

(a) if the date of the commencement of the new employment is within the first three weeks of the year, comply with the provisions of paragraph (3) of this Regulation with the modification that he shall deduct or repay tax without taking into account the cumulative emoluments and cumulative tax shown on the copies of the certificate;
(b) in any other case, comply with the provisions of sub-paragraph (a) of

[a] As amended, Employments (No. 3) Regulations 1945, Stat. R. & O., 1945, No. 905.

paragraph (3) of this Regulation, but deduct tax from each payment of emoluments made by him to the employee, and keep records on the prescribed card, as if those payments had been payments to which paragraph (2) of Regulation 20 applies.

(4) If the new employer ceases to employ the employee he shall comply with the provisions of paragraphs (1) and (2) of this Regulation as if a tax deduction card in respect of the employee had been issued to him by the Inspector.

(5) If the employee objects to the disclosure to his new employer of his aforesaid cumulative emoluments, he may deliver the two copies of the certificate to the Inspector before he commences his new employment, and the Inspector may issue a tax deduction card in respect of the employee to the new employer and direct that Regulation 18 shall apply to all payments of emoluments which the new employer makes to the employee.

(6) Retirement on pension shall not be treated as a cessation of employment for the purposes of this Regulation if the emoluments are paid by the same person both before and after the retirement.

19A. *Death of employee.*—(1) On the death of an employee in respect of whom a tax deduction card has been either issued by the Inspector or prepared by the employer under paragraph (3) of Regulation 19 or to whom the provisions of paragraph (2) of Regulation 20 apply, the employer shall forthwith send to the Inspector the certificate (relating to cessation of employment) mentioned in paragraph (1) of Regulation 19 or the certificate mentioned in paragraph (4) of Regulation 20, as the case may require, together with the two copies of the said certificate mentioned in paragraph (2) of the said Regulation 19, and shall insert thereon the name and address of the personal representative of the deceased employee, if they are known to him.

(2) If any emoluments are paid by the employer after the date of the employee's death in respect of his employment with him, the employer shall, on making any such payment, deduct or repay tax as if the deceased employee was still in his employment at the date of the payment, and

(a) if the amount of those emoluments and the date on which they will be paid are known to him at the time he completes the certificate mentioned in paragraph (1) of this Regulation, he shall include thereon the amount of the emoluments, the date on which they will be paid, and the amount of tax which will be deducted or repaid, and

(b) in any other case, he shall indicate on the certificate that a further payment of emoluments will be made by him.

20. *Employee for whom tax deduction card not held.*—(1) If the employer makes any payment of emoluments to an employee in respect of whom he has not received a tax deduction card from the Inspector and that payment is equivalent to emoluments at a rate exceeding £2 a week, or, in the case of a new employee with other employment, £1 a week, the employer, on the occasion of the first such payment, shall forthwith render a return to the Inspector giving the name and address of the employee, the date on which his employment commenced, and such other particulars as may be necessary to secure the issue of the appropriate tax deduction card.

(2) If the said payment is the first payment of emoluments made by the employer to the employee during the year and is equivalent to emoluments at a rate exceeding £2 a week, the employer on making it shall also deduct tax and keep records on the prescribed card as if the payment was one to which Regulation 18 applied, and shall do likewise on making any subsequent

payment of emoluments to the employee until a tax deduction card in respect of the employee is issued to him by the Inspector.

The appropriate code for the purposes of deduction of tax under this paragraph shall be the code shown on the prescribed card.

(3) On making any payment of emoluments to the employee after a tax deduction card has been issued in respect of him by the Inspector, the employer shall deduct or repay tax by reference to the appropriate code in accordance with Regulation 15, and shall keep the records required by that Regulation, and for those purposes—

(a) any cumulative emoluments entered on the tax deduction card by the Inspector shall be treated as if they represented emoluments paid by the employer; and

(b) the cumulative tax before the first payment as aforesaid shall be taken to be the sum of any cumulative tax entered as aforesaid and any tax which the employer was liable to deduct from the employee's emoluments under paragraph (2) of this Regulation.

(4) Where paragraph (2) of this Regulation applies and the employer ceases to employ the employee before a tax deduction card in respect of the employee has been issued to him by the Inspector, Regulation 19 shall apply as if a tax deduction card had been so issued, but subject to the modifications that—

(a) the certificate of the employer under that Regulation shall not contain particulars of the cumulative emoluments and cumulative tax; and

(b) the new employer, instead of deducting or repaying tax by reference to the cumulative emoluments and cumulative tax, shall deduct tax and keep records in accordance with paragraph (2) of this Regulation.

(5) In the case of an employee who is paid monthly or at longer intervals, the references in this Regulation to emoluments at rates exceeding £2 a week and £1 a week shall be treated as references to emoluments at rates exceeding £8 a month and £4 a month respectively.

(6) This Regulation shall not apply where—

(a) the employee on commencing employment has delivered to his employer copies of a certificate such as is mentioned in Regulation 19, except to the extent provided in paragraph (4) of this Regulation; or

(b) the employee performs the duties of his employment wholly outside the United Kingdom; or

(c) the employee is outside the United Kingdom and the emoluments are paid outside the United Kingdom; or

(d) the employee is resident outside the United Kingdom and the emoluments consist of a pension.

21. *Employee on fixed pay.*—(1) In the case of an employee who is in receipt of a fixed salary or wage, the Inspector may direct the employer to deduct tax from each payment of emoluments which he makes to the employee by reference only to the amount of that payment, without regard to the cumulative emoluments and cumulative tax, and where the Inspector has so directed the employer shall deduct tax accordingly by reference to the appropriate code in the simplified tax tables, and shall record on the tax deduction card the date of each such payment, the gross amount of the emoluments, and the amount of tax, if any, deducted therefrom.

(2) If an employer who has been directed to deduct tax in accordance with paragraph (1) of this Regulation ceases to employ the employee in

question, he shall forthwith return the tax deduction card, duly completed, to the Collector.

(3) Regulations 15 and 19 shall not apply in cases to which this Regulation applies.

32. *Modified method of deduction.*—(1) Where emoluments are paid at intervals not exceeding one week, the Inspector, on being satisfied by the employer as to the general concurrence of the employees whose emoluments are so paid or of the authorised representatives of his employees, may authorise the employer to deduct tax from the emoluments paid to all such employees in accordance with the following provisions of this Regulation, and Regulation 15 shall not apply where that authority is given.

(2) The employer shall deduct tax from each payment of emoluments which he makes to the employee by reference only to the amount of that payment, without regard to the cumulative emoluments and cumulative tax, and shall make the deductions by reference to the appropriate code in the simplified tax tables:

Provided that, if the employment ceases, the employer shall adjust the tax by reference to the employee's cumulative emoluments at the date of the cessation and the corresponding cumulative tax.

(3) At intervals not exceeding three weeks the employer shall ascertain the cumulative emoluments in relation to the date of the last payment of emoluments which he made to the employee and the corresponding cumulative tax, and if the cumulative tax is less than the total net tax deducted from the employee's emoluments since the beginning of the year the employer shall repay the difference on the occasion of the next payment of emoluments, in addition to making any necessary deduction under paragraph (2) of this Regulation.

(4) Where tax is deducted in accordance with this Regulation the employer shall record on the tax deduction card or in such other form as may be authorised by the Inspector—

(a) the date on which each payment of emoluments is made, the gross amount of the emoluments, and the amount of tax, if any, deducted therefrom in accordance with paragraph (2) of this Regulation; and

(b) the amount of the cumulative emoluments on each occasion on which they are ascertained and, where they are ascertained under the proviso to paragraph (2) or where any difference is repayable under paragraph (3), the amount of the cumulative tax on the occasion in question and the amount of any difference repaid.

(5) No tax shall be repaid to a new employee without the Inspector's authority if, and to the extent that, it would have been repayable on the occasion of the first payment of emoluments to the new employee if tax was being deducted in accordance with Regulation 15.

33. *Aggregation of emoluments in non-cumulative cases.*—Where under these Regulations tax is deductible otherwise than by reference to cumulative emoluments and cumulative tax, the amount of tax to be deducted in any week or month shall be calculated by reference to the aggregate of the emoluments paid to the employee in that week or month.

34. *Tax-free emoluments.*—Where the employer makes a payment to or for the benefit of the employee in respect of his income tax, the amount of the emoluments which the employer pays to the employee shall be deemed for the purposes of deduction and repayment of tax under these Regulations to be such a sum as will include the amount assessable on the employee in

respect of the payment made by the employer in respect of the employee's income tax.

25. *Repayment during sickness and unemployment.*—(1) If, owing to absence from work through sickness or other similar cause, the employee is entitled to receive no emoluments on the usual pay day, the employer shall, on application being made in person by the employee or his authorised representative, make such repayment of tax to the employee as may be appropriate, having regard to his cumulative emoluments at the date of the pay day in question and the corresponding cumulative tax.

(2) The foregoing paragraph shall not have effect in the case of an employee to whom Regulation 22 applies, but if owing to absence from work as aforesaid such an employee is entitled to receive no emoluments on a pay day on which differences are repayable under paragraph (3) of that Regulation, the employer shall, on application being made as aforesaid, make such repayment to the employee as may be appropriate, having regard to his cumulative emoluments at the date of the preceding pay day and the corresponding cumulative tax.

(2A) If, owing to absence from work otherwise than aforesaid, the employee is entitled to receive no emoluments on the usual pay day, the employer either

(a) shall make any such repayment of tax to the employee as would be appropriate under paragraph (1) or, as the case may be, paragraph (2) of this Regulation, if the absence from work was due to sickness; or

(b) not later than the first usual pay day on which no emoluments will be payable to the employee, shall give notice to the Inspector of the employee's absence from work and of his intention to make no repayment to the employee under sub-paragraph (a) of this paragraph, and shall render with the notice a return containing the same particulars with respect to the employee as the employer would be liable to certify under paragraph (1) of Regulation 19 if the employment had ceased on the day on which emoluments were last paid to the employee; and where the said notice is given and the said return rendered within the time limited in this sub-paragraph the employer

(i) shall be relieved of the liability to make any repayment under the provisions of sub-paragraph (a) of this paragraph;

(ii) on the employee's return to work shall forthwith notify the Inspector; and

(iii) for the purpose of deducting or repaying tax on the occasion of any subsequent payment of emoluments to the employee during the year shall take into account the amount of any repayment made by the Commissioners of Inland Revenue under paragraph (3) of this Regulation of which he is notified by the Inspector.

(3) In the case of a person who has ceased to be employed or with respect to whom a notice has been given and return rendered under the provisions of sub-paragraph (b) of paragraph (2A) of this Regulation, any repayment which may be appropriate at any date, having regard to his cumulative emoluments at that date and the corresponding cumulative tax, shall be made to him by the Commissioners of Inland Revenue, or on behalf of those Commissioners in accordance with such arrangements as they may make for the purpose with any other Government Department; and a person who has ceased to be employed shall, on applying for repayment, produce to the Inspector the copies of the certificate mentioned in Regulation 19 and such evidence of his unemployment as the Inspector may require.

26. *Certificate of tax deducted.*—(1) After the end of the year the employer shall give the employee a certificate showing the total amount of the emoluments paid by the employer to the employee during the year, the appropriate code, and the total net tax deducted from the emoluments.

(2) In the case of an employee taken into employment after the beginning of the year, the certificate shall include any emoluments paid to the employee by any previous employer and any tax deducted from those emoluments, being emoluments and tax which the employer giving the certificate was required to take into account for the purposes of deducting or repaying tax in the case of emoluments paid by him.

(3) A certificate shall be given under this Regulation to every employee who is in the employer's employment on the last day of the year and from whose emoluments any tax has been deducted during the year.

PART IV.—PAYMENT AND RECOVERY OF TAX, ETC.

27. *Payment of tax by employer.*[4]—(1) Within fourteen days of the end of every income tax month the employer shall pay to the Collector all amounts of tax which he was liable under these Regulations to deduct from emoluments paid by him during that income tax month, reduced by any amounts which he was liable under these Regulations to repay during that income tax month:

Provided that, where Regulation 21 applies, payment shall be made quarterly, that is to say, the tax deductible during the first three income tax months in any year shall be paid not later than the 19th July in that year, the tax deductible during the second three income tax months shall be paid not later than the 19th October, and so on.

(2) The Collector shall give the employer a receipt on the prescribed form for the total amount so paid.

(3) If the amount which the employer is liable to pay to the Collector under paragraph (1) of this Regulation exceeds the amount actually deducted by him from emoluments paid during the relevant income tax month, the Commissioners of Inland Revenue, on being satisfied by the employer that he took reasonable care to comply with the provisions of these Regulations and that the underdeduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the employee, and where they so direct the employer shall not be liable to pay the amount of the said excess to the Collector.

(4) If the total of the amounts which the employer was liable to repay during any income tax month exceeds the total of the amounts which he was liable to deduct during that income tax month, he shall be entitled to deduct the excess from any subsequent payment which he is liable to make to the Collector under paragraph (1) of this Regulation or to recover it from the Commissioners of Inland Revenue.

28. *Employer failing to pay tax.*[4]—(1) If within fourteen days of the end of any income tax month the employer has paid no amount of tax to the Collector under Regulation 27 for that income tax month and the Collector is unaware of the amount, if any, which the employer is liable so to pay, the Collector may give notice to the employer requiring him to render, within the time limited in the notice, a return showing the name of every employee to whom he made any payment of emoluments or repayment of tax in the period from the preceding sixth day of April to the day (being the last day of an income tax month) limited by the notice, together with such particulars with regard to each such employee as the notice may require, being particulars of

(a) the code appropriate to the employee's case;
(b) the payments of emoluments made to him during that period; and
(c) any other matter affecting the calculation of the tax which the employer

[4] As amended, Employments (No. 3) Regulations, 1945, Stat. R. & O., 1945, No. 365.

was liable under these Regulations to deduct or to repay to the employee during that period.

(2) The Collector, by reference to the tax tables, shall ascertain and certify the amount of tax which the employer is liable to pay to him in respect of the income tax month in question.

(3) The production of the return made by the employer under paragraph (1) of this Regulation and of the certificate of the Collector under paragraph (2) shall be sufficient evidence that the amount shown in the said certificate is the amount of tax which the employer is liable to pay to the Collector in respect of the income tax month in question; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Collector under paragraph (1) of this Regulation extends to two or more consecutive income tax months, the provisions of these Regulations shall have effect as if the said consecutive income tax months were one income tax month.

(5) A notice may be given by the Collector under paragraph (1) of this Regulation notwithstanding that an amount of tax has been paid to him by the employer under Regulation 27 for any income tax month, if the Collector is not satisfied that the amount so paid is the full amount which the employer is liable to pay to him for that month, and the provisions of this Regulation shall have effect accordingly.

29. *Recovery of tax.*[1]—(1) The provisions of any enactment relating to the recovery of income tax charged under Schedule E of the Income Tax Acts shall apply to the recovery of any amount of tax which an employer is liable under Regulation 27 to pay to the Collector for any income tax month as if the said amount had been charged on the employer under Schedule E:

Provided that—

(a) the greatest such amount which shall be recoverable summarily as a civil debt shall be one hundred pounds instead of fifty pounds; and

(b) summary proceedings for the recovery of any such amount may be brought at any time before the expiry of twelve months after the date on which that amount became payable to the Collector, or, where a return has been required under Regulation 28, before the expiry of twelve months after the date of the delivery of that return to the Collector.

(2) Proceedings may be brought for the recovery of the total amount which the employer is liable to pay as aforesaid for any income tax month, without distinguishing the amounts which he is liable to pay in respect of each employee and without specifying the employees in question, and for the purposes of summary proceedings the said total amount shall be one matter of complaint; but nothing in this paragraph shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the employer is liable to pay as aforesaid for any income tax month in respect of his several employees.

(3) A certificate of the Collector that any amount of tax such as is mentioned in paragraph (1) of this Regulation has not been paid to him, or, to the best of his knowledge and belief, to any other Collector, or to any person acting on his behalf or on behalf of another Collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

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[1] As amended, Employments (No. 3) Regulations, 1943, Stat. R. & O., 1943, No. 365.

(4) Summary proceedings commenced in the name of any Collector may be continued in the name of that or any other Collector.

30. *Return by employer at end of year.*[a]—(1) Not later than fourteen days after the end of the year the employer shall render a return to the Collector, either on the tax deduction card or in such other form as the Commissioners of Inland Revenue may approve or prescribe, showing the total amount of the emoluments paid by him to the employee during the year, the appropriate code, and the total net tax deducted from the emoluments.

(1A) The return shall be accompanied by a statement containing a list of all tax deduction cards issued to the employer by the Inspector or prepared by him under the provisions of paragraph (3) of Regulation 19 during that year and of the cards prepared by him under the provisions of paragraph (2) of Regulation 20 in respect of employees for whom a tax deduction card was not subsequently issued by the Inspector, together with a certificate showing the total net tax deducted or the total net tax repaid in the case of each employee and the total net tax deducted or repaid by him in respect of all his employees during that year.

(2) In the case of an employee taken into employment after the beginning of the year, the said return shall also show the total amount of any emoluments paid to the employee by any previous employer and of any tax deducted from those emoluments, being emoluments and tax which the employer rendering the return was required to take into account for the purposes of deducting or repaying tax in the case of emoluments paid by him.

(3) A return shall be made under this Regulation in respect of every employee in respect of whom a tax deduction card has been either issued to the employer by the Inspector or prepared by the employer under paragraph (3) of Regulation 19, or to whom the employer has at any time during the year paid emoluments at a rate equivalent to a rate exceeding £2 a week, or, in the case of an employee who has or had other employment, £1 a week.

In the case of employees paid monthly or at longer intervals, the references in this paragraph to rates exceeding £2 a week and £1 a week shall be treated as references to rates exceeding £8 a month and £4 a month respectively.

(4) If within fourteen days of the end of any year an employer has failed to pay to the Collector the total net amount of tax which he is liable so to pay, the Collector may prepare a certificate showing the net amount of tax remaining unpaid for that year. To the amount shown in the said certificate the provisions of paragraphs (1) and (2) of Regulation 29 shall apply with the modification that summary proceedings for the recovery of the net amount of tax or such part of it as remains unpaid may be brought at any time before the expiry of twelve months after the date limited for delivery of the statement required by paragraph (1A) of this Regulation or, if that statement is not delivered by that date, before the expiry of twelve months after its delivery; and to the said certificate the provisions of paragraph (3) of Regulation 29 shall with any necessary modifications apply.

31. *Priority in bankruptcy and winding-up.*—(1) There shall be included among the debts which under section 33 of the Bankruptcy Act, 1914, are to be paid in priority to all other debts in the distribution of the property of a bankrupt or person dying insolvent, so much as is unpaid of the employer's liability for the period of twelve months next before the date of the receiving order or of the death, as the case may be.

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[a] As amended, Employments (No. 3) Regulations, 1946, Stat. R. & O., 1946, No. 2025.

(2) There shall be included among the debts which under section 264 of the Companies Act, 1929, are to be paid in priority to all other debts in the winding up of a company, so much as is unpaid of the employer's liability for the period of twelve months next before the relevant date (as defined by that section).

(3) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, there shall be included among the debts which under section 78 of the Companies Act, 1929, are to be paid in priority to any claim for principal or interest in respect of the debentures so much as is unpaid of the employer's liability for the period of twelve months next before the date on which the receiver is appointed or possession is taken as aforesaid, as the case may be.

(4) Any reference in the Liabilities (War-time Adjustment) Act, 1941, to debts which would be or would have been entitled to be paid in priority in the event of the bankruptcy of the debtor or the making of a receiving order against him, or, in the case of a debtor being a company, in the event of the winding up, or the making of an order for the winding up, of the company, shall include a reference to debts which in that event would be or would have been entitled to be paid in priority by virtue of paragraph (1) or paragraph (2) of this Regulation.

(5) In the application of this Regulation to Scotland the following paragraph shall be substituted for paragraph (1):—

> "(1) There shall be included among the debts which under section 118 of the Bankruptcy (Scotland) Act, 1913, are to be paid in priority to all other debts in the distribution of a bankrupt's estate, so much as is unpaid of the employer's liability for the period of twelve months next before the date mentioned in subsection (4) of that section."

(6) In the application of this Regulation to Northern Ireland the following paragraph shall be substituted for paragraph (1):—

> "(1) There shall be included among the debts which under the Preferential Payments in Bankruptcy Act (Northern Ireland), 1933, are to be paid in priority to all other debts in the distribution of the property of a bankrupt, debtor, or person dying insolvent, so much as is unpaid of the employer's liability for the period of twelve months next before the date on which the order of adjudication of the bankrupt was made, the petition of arrangement of the debtor was filed, or as the case may be the person died insolvent";

and paragraphs (2), (3) and (4) of this Regulation shall have effect as if references to section 294 and to section 76 of the Companies Act (Northern Ireland), 1932, were respectively substituted for references to section 264 and to section 78 of the Companies Act, 1929, and as if references to the Liabilities (War-time Adjustment) Act (Northern Ireland), 1941, were substituted for references to the Liabilities (War-time Adjustment) Act, 1941.

(7)[1] For the purposes of this Regulation the expression "employer's liability for the period of twelve months" means all sums which an employer was liable under these Regulations to deduct from emoluments paid by him during the period of twelve months mentioned in this Regulation, reduced by any amounts which he was under these Regulations liable to repay during the same period.

Inspection of employer's records.—Every employer, when called upon to do so by any authorised officer of the Commissioners of Inland Revenue,

[1] As amended, Employments (No. 3) Regulations, 1943, Stat. R. & O., 1943, No. 365.

shall produce to that officer for inspection, at the employer's premises, all wages sheets, tax deduction cards, and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees or the deduction of tax therefrom.

33. *Death of employer.*—If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him or, if no person succeeds him, the person on whose behalf he paid emoluments.

34. *Succession to a business, etc.*—(1) This Regulation applies where there has been a change in the employer from whom an employee receives emoluments in respect of his employment in any trade, business, concern or undertaking, or in connection with any property, or from whom an employee receives any annuity or pension.

(2) Where this Regulation applies, the change shall not be treated as a cessation of employment for the purposes of Regulation 19, but, in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

Part V.—Special Provisions applicable to Seamen

35. *Interpretation of Part V.*—In this Part of these Regulations—

"employer" includes the master of a ship;

"foreign-going ship" and "home-trade ship" have the same meanings respectively as in the Merchant Shipping Act, 1894;

"seaman" means any person who has signed the agreement with the crew of a ship to which any determination of the National Maritime Board relating to remuneration applies, not being a member of His Majesty's naval, military or air forces or a person in the employment of a railway company; and, for the purpose of this definition—

(a) where the crew of a ship are engaged at a place outside the United Kingdom on terms which adopt any determination of the National Maritime Board relating to remuneration, that ship shall be deemed to be a ship to which that determination applies if the determination would have applied to the ship if the crew had been engaged in the United Kingdom;

(b) where an arrangement has been made for the purposes of deduction of tax from the emoluments of persons resident in the United Kingdom who are employed or engaged in sea-going service in any foreign ship, those persons shall be deemed to be seamen; and

(c) an apprentice or cadet whose name is entered on the agreement with the crew shall be deemed to be a person who has signed the agreement;

"the seamen's tables" mean the tables prepared by the Commissioners of Inland Revenue for the purposes of deduction of tax from seamen's wages;

"wages" means basic pay and war risk money.

36. *Deduction of tax from seamen's wages.*—(1) Where the provisions of this Part of these Regulations so require, every employer who pays wages to any seaman shall deduct tax therefrom in accordance with those provisions by

reference to the appropriate part of the seamen's tables, and Parts II and III of these Regulations shall not apply in the case of seamen:

Provided that tax shall not be deducted from the wages of—

(a) a seaman whose permanent home address, as given in the agreement with the crew, is outside the United Kingdom; or

(b) a seaman who under the terms of his employment or engagement is required to remain outside the United Kingdom for a period of at least three years.

(2) In the case of a seaman who has signed the agreement with the crew of a foreign-going ship, tax shall be deducted when his balance of wages is paid to the seaman in respect of every complete month of the period of employment or engagement for which wages are credited:

Provided that—

(a) in the case of an uncompleted month, half the amount of tax shown in the seamen's tables shall be deducted in respect of a period of over fourteen days and under thirty days, but no tax shall be deducted in respect of any period of less than fifteen days; and

(b) if the payment of wages relates to a period of employment or engagement of over eleven months, the amount of tax to be deducted in respect of each complete twelve months of the period of employment or engagement shall be the amount appropriate to a period of eleven months.

(3) In the case of a seaman who has signed the agreement with the crew of a home-trade ship, tax shall be deducted from every payment of wages made to the seaman in respect of the number of days for which those wages are paid.

37. *Deduction from other emoluments of seamen.*—Tax shall be deducted by reference to the seamen's tables from payments of—

(a) shipwreck pay;

(b) shipwreck leave pay;

(c) wages from Overseas Manning Pools; and

(d) any other emoluments paid to a seaman which arise out of his service as such, not being pay or subsistence allowance in respect of leave (whether taken on or off Articles), pay in lieu of leave, sick pay, special payment while sick (as defined by the National Maritime Board), emoluments paid in respect of overtime, or emoluments paid by the Merchant Navy Reserve Pool;

and all the provisions of this Part of these Regulations shall apply to any such payments as if they were payments of wages, subject to the necessary modifications and in particular to the modification that a payment of shipwreck leave pay shall be treated as paid in respect of a period of fifteen days.

38. *Payment of tax to Collector.*—All amounts of tax which an employer is liable under the provisions of this Part of these Regulations to deduct from any payment of wages shall be paid to the Collector—

(a) in any case falling within paragraph (2) of Regulation 36, within one month of the termination of the agreement with the crew, or, if the agreement terminated outside the United Kingdom, within such longer period as the Commissioners of Inland Revenue may allow;

(b) in any case falling within paragraph (3) of Regulation 36, not later than the fourteenth day of the month following the month in which the payment in question was made; and

(c) in any case falling within Regulation 37, within one month of the date on which the emoluments in question were paid, or within such longer period as the Commissioners of Inland Revenue may allow.

39. *Return to be rendered by employer.*—Every employer who pays any wages to a seaman shall, within the time laid down in Regulation 38 for the payment of the tax, if any, which he is liable to deduct from those wages, render a return to the Collector, showing—

(a) the seaman's name;

(b) his rank or rating and discharge book number;

(c) the total emoluments paid to him by the employer for the period to which the return relates;

(d) the part of the seamen's tables appropriate to his case, or that he fell within the proviso to paragraph (1) of Regulation 36; and

(e) the amount, if any, of the tax deducted from his wages under this Part of these Regulations.

40. *Application of Part IV.*—(1) The provisions of Part IV of these Regulations shall apply in relation to seamen subject to the necessary modifications and in particular to the modifications set out in the following paragraphs of this Regulation.

(2) Paragraph (1) of Regulation 27 shall apply as if for the reference to payment of tax within fourteen days of the end of any income tax month there were substituted a reference to payment of tax within the time limited in Regulation 38.

(3) Regulation 28 shall not apply, but the following provisions shall have effect where the employer fails to pay to the Collector within the time limited in Regulation 38 any amount of tax which he is liable under this Part of these Regulations to deduct from any wages paid by him, that is to say—

(a) the production of the return made by the employer under Regulation 39 shall be sufficient evidence that the amount of tax shown in that return as deducted by the employer is an amount which the employer is liable to pay to the Collector; and

(b) if the amount of tax shown as deducted in the said return differs from the amount which the employer was liable to deduct from the wages in accordance with the seamen's tables, a certificate of the Collector as to the amount deductible in accordance with those tables shall be sufficient evidence that that amount, and not the amount shown in the said return, is the amount which the employer is liable to pay to the Collector; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(4) Regulation 30 shall not apply in the case of seamen.

41. *Repayment to seaman during the year.*—No tax shall be repaid to any seaman by the employer, but the Inspector, on application being made to him by the seaman, may make such repayment to the seaman as may be appropriate at any date, having regard to—

(a) the seaman's emoluments for the period from the beginning of the year up to and including that date; and

(b) the amount which would be the corresponding cumulative tax if those emoluments were the seaman's cumulative emoluments and the code appropriate to this case had been determined under Regulation 8.

PART VI.—ASSESSMENT

42. *Assessment of emoluments by Inspector.*—(1) Income tax in respect of emoluments shall be assessed and charged by the Inspector, who for that

purpose may exercise all the powers of an assessor and of any commissioners as well as the powers of an Inspector.

(2) Assessments in England shall be made for divisions and not for parishes.

(3) No assessment shall be made on a railway company in respect of the emoluments of any of its employees, but the assessments shall be made on the several employees.

(4) Any assessment may be made in any division or district, and shall be valid notwithstanding that the employee was not in that division or district, or in the United Kingdom, during the year in which the assessment was made.

(5) All the emoluments of an employee may be included in one assessment.

43. *Return of certain emoluments by employer.*—The Inspector may give notice to the employer requiring him to render a return of any emoluments paid by him to any employee for any year, being emoluments which were not paid to the employee until after the end of that year, and any such return shall be rendered to the Inspector within the time limited in the notice.

44. *Notices of assessment.*—The Inspector shall serve a notice of assessment on every employee assessed by whom tax is payable or from whose emoluments any tax was deducted during the year of assessment, not being tax which was repaid during that year.

45. *Objections and appeals against assessment.*—(1) If the employee is aggrieved by the assessment he may give notice thereof to the Inspector, stating the ground of his objection, within twenty-one days of the date of the notice of assessment.

(2) On receipt of any such notice of objection the Inspector, on proof to his satisfaction, may agree with the employee as to the correct amount to be assessed and may thereupon amend the assessment. Notice of the amended assessment shall then be served on the employee by the Inspector.

(3) In default of agreement as aforesaid the employee, on giving notice to the Inspector, may appeal to the General Commissioners for the division in which the assessment was made or, if he so elects, to the Special Commissioners, and the provisions of the Income Tax Acts relating to the determination of appeals against assessments and to the statement of a case for the High Court on a point of law shall apply accordingly.

46. *Adjustment for tax overpaid or unpaid.*—(1) If the tax payable under the assessment is less than the total net tax deducted from the employee's emoluments during the year, the Inspector may, and if the employee so requires shall, repay the difference to the employee instead of taking it into account in determining the appropriate code for a subsequent year.

(2) If the tax payable under the assessment exceeds the total net tax deducted from the employee's emoluments during the year, the Inspector may require the employee to pay the excess to the Collector instead of taking it into account in determining the appropriate code for a subsequent year, and where the Inspector so requires the employee shall pay the excess accordingly.

(3) For the purpose of determining the amount of any difference or excess as aforesaid, any necessary adjustment shall be made to the aforesaid total net tax in respect of—

(a) any tax which the employer was liable to deduct from the employee's emoluments but failed so to deduct, having regard to whether the Commissioners of Inland Revenue have or have not directed that that tax shall be recovered from the employee; and

(b) any tax overpaid or remaining unpaid for any previous year, including a year before the year 1944—45.

47. *Provisions for direct collection.*—(1) In cases of casual employment, and in any other class of case in which the Commissioners of Inland Revenue are of opinion that deduction of tax by reference to the tax tables is impracticable, those Commissioners may make special arrangements for the collection of the tax in respect of any emoluments and may in particular direct that the following provisions of this Regulation shall apply.

(2) As early in the year as may be the Inspector shall make an assessment for that year in an amount equal to the amount of the employee's emoluments for the preceding year, or, if the employee was in employment during part only of that preceding year, in an amount which bears the same proportion to the amount of the employee's emoluments for that preceding year as a full year bears to the part of that preceding year during which the employee was in employment:

Provided that the Inspector may make the assessment in an amount estimated to the best of his judgment if—

(a) he is unable to ascertain the full amount of the employee's emoluments for the preceding year or, as the case may be, for the part thereof during which the employee was in employment; or

(b) the employee had no emoluments for that year.

(3) The Inspector shall serve a notice of assessment on the employee, and the provisions of Regulation 45 relating to objections and appeals shall apply accordingly.

(4) The Inspector shall transmit to the Collector particulars of the tax payable under the assessment.

(5) If the employee has objected to or appealed against the assessment, so much of the tax as appears to the Inspector to be not in dispute shall be treated as tax payable under the assessment for so long as the objection or appeal remains undetermined:

Provided that if the employee considers that a smaller amount is not in dispute he may require the amount not in dispute to be determined by the Commissioners by whom an appeal against the assessment falls to be heard.

(6) The tax payable under the assessment shall be paid to the Collector in four equal instalments during the period beginning twenty-one days after the service of the notice of assessment and ending on the following 5th April. The first such instalment shall be payable on the last day of the first quarter of that period, the second on the last day of the second quarter of that period, the third on the last day of the third quarter of that period, and the fourth on the following 5th April.

(7) If the employee proves that his emoluments for the period from the beginning of the year to the following 5th July amounted to less than one-quarter of the amount of the assessment and that the tax paid by him during the first quarter of the period mentioned in paragraph (6) exceeds the tax which would have been so payable if the assessment had been made in an amount equal to four times those emoluments, the Inspector may direct that the instalment payable during the next quarter of that period shall be reduced by the amount of the excess.

(8) The provisions of paragraph (7) shall apply with the necessary modifications where the employee proves that his emoluments for the period from the beginning of the year to the following 5th October or 5th January amounted to less than one-half or three-quarters respectively of the amount of the assessment.

(9) After the end of the year, the amount of the employee's emoluments for the year shall be ascertained, and—

(a) if the said amount is less than the amount assessed, the assessment shall be reduced accordingly and any tax overpaid shall be repaid;

(b) if the said amount is greater than the amount assessed, an additional assessment shall be made, and the provisions of paragraphs (3), (4) and (5) of this Regulation shall apply in the case of any such additional assessment.

47A. *Alternative procedure for direct collection*[a].—(1) In any case falling within paragraph (1) of Regulation 47, the Inspector, instead of making an assessment under paragraph (2) of that Regulation, may issue a tax deduction card to the employee, specifying the name of the employee, the capacity in which he receives emoluments and the code appropriate to his case, and where the Inspector does so the following provisions of this Regulation shall apply.

(2) Whenever the employee receives any emoluments during the year for which the tax deduction cards was issued, he shall record on the tax deduction card the gross amount of the emoluments, the date on which he received them, the cumulative emoluments in relation to that date, and the corresponding cumulative tax.

(3) Within fourteen days after the end of every quarter, the employee shall pay to the Collector the amount of the cumulative tax corresponding to the cumulative emoluments at the last date during the quarter in question on which he received emoluments (or, in the case of the last quarter of the year, to the cumulative emoluments for the year), reduced by any amounts of tax paid to the Collector in respect of previous quarters of the same year.

(4) If within fourteen days after the end of any quarter the employee has paid no amount of tax to the Collector for that quarter, and the Collector is unaware of the amount, if any, which the employee is liable so to pay, or if an amount has been paid but the Collector is not satisfied that it is the full amount which the employee is liable to pay to him for that quarter, the Collector may either—

(a) give notice to the employee requiring him to render, within the time limited in the notice, a return in the prescribed form containing particulars of all emoluments received by him during the period specified in the notice and such other particulars affecting the calculation of the tax payable for the quarter in question as may be specified in the notice; and in such a case the provisions of Regulation 28 regarding the ascertainment and certification by the Collector of tax payable by an employer, and the provisions of Regulation 29 regarding the recovery of any such tax, shall apply with the necessary modifications for the purposes of ascertaining, certifying and recovering the tax payable by the employee as if it were tax which the employee was liable to deduct from emoluments paid by him; or

(b) report the facts to the Inspector, in which case the Inspector shall direct the employee to return the tax deduction card to him and shall make an assessment on the employee under the provisions of Regulation 47; and for the purposes of paragraph (6) of that Regulation the due dates of the several instalments of the tax payable under the assessment shall be determined as if the notice of

[a] Added by Employments (No. 2) Regulations, 1944, Stat. R. & O., 1944, No. 1018.

assessment had been served twenty-one days before the beginning of the year of assessment:

Provided that no proceedings for the recovery of any instalment shall be commenced within less than twenty-one days after the service of the notice of assessment.

(5) If the employee ceases to receive emoluments he shall forthwith render a return to the Collector on the tax deduction card, showing the last date on which he received any emoluments, his cumulative emoluments at that date, and the corresponding cumulative tax.

(6) Not later than fourteen days after the end of the year the employee shall (unless he has previously sent the tax deduction card to the Collector with the particulars required by paragraph (5) of this Regulation) render a return to the Collector on the tax deduction card, showing his cumulative emoluments at the end of the year and the corresponding cumulative tax; and the provisions of paragraph (4) of Regulation 30 regarding the certification and recovery of tax remaining unpaid by an employer for any year shall apply in the case of any tax remaining unpaid by the employee.

(7) In this Regulation the expression "cumulative emoluments" means, in relation to any date, the sum of all emoluments received by the employee from the beginning of the year up to and including that date, irrespective of the person or persons from whom the emoluments were received; and the expression "quarter" means any period of three months beginning on the 6th April, 6th July, 6th October or 6th January.

(8) If the employee receives emoluments in more than one capacity, no account shall be taken for the purposes of this Regulation of the emoluments received by him in any capacity other than the capacity specified on the tax deduction card.

48. *Recovery of tax from employee*.—(1) Any tax which is payable to the Collector by any employee may be recovered in the manner provided by the Income Tax Acts.

(2) Any tax which is payable to the Collector under paragraph (2) of Regulation 46, or under any additional assessment made under paragraph (9) of Regulation 47, shall be payable within fourteen days of the date on which the Collector first makes application for payment thereof.

SUPPLEMENT

PROVISIONS OF THE FINANCE (NO. 2) ACT, 1945

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NOTE—The remaining amendments made by this Act are indicated in the relevant places in the body of the book.

Redundancy Schemes—If, under what is called a "redundancy scheme," certified by the Board of Trade in connection with the rationalisation of industry,[1] any payment is made on or after April 6, 1945, to a person carrying on a trade covered by the scheme, it is to be treated as a trading receipt.[2] But if such payment is made for any damage, except what is to be allowed for as stated below, the amount of the receipt is to be accordingly reduced for this purpose.[3] These exceptions are: any damage which gives rise to an allowance under the Income Tax Act, 1945, on demolition, etc., or disposal, of any asset,[4] and any loss or other burden which gives rise to a deduction in computing trade profits.[5] Payments to a person whose trade has in fact ceased to be carried on are to be included as receipts, as on the last day of the trading.[6]

Where the amount of the receipts has been reduced as indicated above, any subsequent contributions to the scheme are to be in turn reduced before they can be deducted as trading expenses.[7]

Where, in future, the certificate of a redundancy scheme is cancelled,[8] and any deductible contributions (that is, contributions paid wholly and exclusively for the purposes of the trade by the person who carries it on, and in furtherance of the primary purposes of the scheme[6]) have not been repaid in one year from the cancellation, the body carrying out the scheme is to be charged to tax under Case VI upon—broadly speaking

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[1] Under Act of 1936, s. 25 (3); see p. 129.

[2] No. 2 Act of 1945, s. 24 (1), p. 782, Repayments are excluded, sub-s. 5.

[3] Sub-s. 2; Fourth Sched., Part II., see para. 6, p. 793.

[4] Income Tax Act, 1945, ss. 3, 17; see pp. 163—165.

[5] See Chap. 6.

[6] No. 2 Act of 1945, s. 24 (3), (4); notional discontinuance under rule 11 (see p. 148), is disregarded.

[7] Sub-s. 2, end; Fourth Sched., Part III.

[8] Act of 1936, s. 25 (1) (3)—(5); see p. 129.

—the aggregate amount then unrepaid. The charge is for the year of assessment in which the year last-mentioned expires.[9]

The above provisions apply also to "statutory redundancy schemes," that is, schemes sanctioned by or under any Act for the elimination of redundant works, machinery or plant, or for similar purposes.[10] Certain necessary adaptations are made,[11] as section 25 of the Act of 1935 is not applicable to such schemes; but the provisions of that section as to charge of tax on repaid contributions are specifically incorporated.[12]

Excess Profits Tax Refunds—The refunds to payers of excess profits tax directed by the Finance Act, 1941, are to be paid as soon as may be after the final settlement of liability to that tax and the national defence contribution.[13] These "post-war refunds" are, speaking generally, charged with income tax for 1946—47, and at the standard rate for that year, whatever the actual date of repayment; this tax is normally to be deducted in paying the refund;[14] but there are two exceptions at the option of the taxpayer, which are alternative.[15] An individual who carried on (solely or in partnership) the trade on the profits of which the refund is made may claim that this deduction shall be reduced to the total sum that would have been payable as income tax if an appropriate proportion of the refund had been included in his trade profits for each of the relevant accounting periods.[16] This provision applies to surtax as well as to income tax at the standard rate;[16] and adjustments are to be made, if necessary, for the wear and tear allowance, and the carry-forward of losses.[17] Any claim must be made by April 5, 1947; but the Inland Revenue may extend the time.[18]

Alternatively, if the net refund (after deducting income tax, including surtax) is to be used for a trade which is within Case I for 1947—48, it may be charged as profits of the trade for that year; the amount deducted as tax at the standard rate for 1946—47 in paying the refund will be credited against the charge for 1947—48. For this option, all the persons liable to the charge for 1947—48 must join in giving notice in writing to the inspector not later than December 31, 1948, unless the Inland Revenue extend the time; and this option applies only if at least one of the persons who carried on the trade on the profits of which the refund is made carries on the trade for which it is to be used, for the whole or part of the year 1947—48.[19]

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[9] No. 2 Act of 1945, s. 25 (1), p. 783; see proviso and sub-s. 2 for certain modifications of the charge.

[10] S. 26 (1) (b), (3); *e.g.*, Cotton Industry Act, 1939. [11] Sub-s. 2.

[12] Sub-s. 1 (a); see p. 129, note [99]. [13] No. 2 Act of 1945, s. 36, p. 784.

[14] S. 45, p. 785. [15] S. 45 (4).

[16] S. 44 (1); as to husband and wife, see sub-s. 3. Definitions, etc., in s. 50 (1)—(3), pp. 797—784.

[17] S. 44 (2); see pp. 131, 152. [18] Sub-s. 4; as to appeal, see p. 205, note [66].

[19] S. 45 (1), with proviso, see definitions in s. 50 (1) as to change treated as discontinuance, see s. 45 (2) and p. 146. S. 45, is adapted to cases of more than one trade by sub-s. 3.

In a case where excess profits tax is payable after December 31, 1945, the Commissioners are empowered to credit the net refund against that tax, and tax at the standard rate for 1946—47 will then be treated as having been deducted in making the refund.[20]

The above provisions are adapted to partnerships, groups of companies, etc.[21]

Relief from Double Taxation—If arrangements are made with any territory outside the United Kingdom (whether a part of the British Commonwealth or not) with a view to affording relief from double taxation to income tax and any tax of a similar character, and it is declared by Order in Council that it is expedient that they should have effect, the arrangements specified in the Order may provide for the following matters, and supersede income tax enactments relating to them:[22] (a) relief from tax; (b) charging income from sources in the United Kingdom to persons not resident: (c) determining the income to be attributed to such persons and their agencies, branches or establishments in the United Kingdom: (d) determining the income to be attributed to persons resident in the United Kingdom who have special relationships with persons not resident.[23] In relation to any "Dominion" within the wide definition of section 27 of the Act of 1920, such an Order will vary or supersede the provisions of that section.[24] The arrangements may be retrospective, and need not be confined to income which is itself the subject of double taxation.[25]

The Commissioners of Inland Revenue may make regulations for carrying out sections 51 and 52 and the Seventh Schedule, or any arrangements having effect thereunder, both generally and on certain specified matters.[26]

Credits against United Kingdom Tax—Where the arrangements to which effect is given by Order in Council provide for "foreign income tax" to be credited against United Kingdom tax, that credit is regulated by the provisions of the Seventh Schedule.[27] It is allowed against income tax for any year of assessment only to a person resident in the United Kingdom for that year.[28]

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[20] S. 47, with proviso.

[21] Ss. 49, 50; Sixth Sched., Part I., para. 1 (c), and proviso, Part II, paras. 5 (c) with proviso (i) (ii), 6, 7; Part III, para. 9, pp. 787—788, 795—797.

[22] No. 2 Act of 1945, s. 51 (1), p. 788. Such an order must first be submitted in draft to the House of Commons, s. 56 (2); it may be similarly revoked, s. 56 (1).

[23] As to (b), (c), (d), see Chap. 5, pp. 88—94, and Chap. 12, pp. 270—272.

[24] S. 51 (2); see pp. 19—23.

[25] S. 51 (6).

[26] S. 52, see paras. (a), (b), (c). Banks must if required disclose particulars relating to income of foreign residents, s. 55 (2); see p. 359.

[27] S. 51 (4). By the definition in para. 1 (1), p. 797, the Schedule applies to taxes corresponding to income tax, in the Dominions as elsewhere.

[28] Para. 3. As to companies and partnerships resident, see p. 79; as to individuals, pp. 265—268.

The maximum credit for any year is ascertained by applying to income which is charged with "foreign income tax" a rate calculated by dividing the person's income tax proper for that year by his total income, with an addition similarly calculated for surtax if any is payable; but the income so charged is computed according to the Income Tax Acts, and not according to the foreign laws.[29] Life assurance relief is disregarded in the calculation,[30] as well as any credit under these double-taxation arrangements. Any sums payable under deduction of tax by the person whose income is in question,[31] and the tax deductible against such sums, are left out on either side of the account; this does not apply to dividends, or to tax deductible against them.[32] A person's total credit for any year under all such arrangements must not exceed his total income tax (including surtax) less any tax deductible by him otherwise than against dividends.[33]

Where the arrangements in question provide for taking into account foreign income tax which is not chargeable on a dividend either directly or by way of deduction, the tax borne in respect of that dividend is to be ascertained according to a proportion of the relevant profits of the body corporate which paid the dividend: detailed directions are given for this calculation.[34] There is also a special direction relating to controlled companies in this connection.[35]

A person need not have a credit allowed him for any year of assessment, if he elects to the contrary.[36] Any claim for an allowance of credit must be made within six years from the end of the year of assessment to which it relates; it is made to the inspector, and if he objects, it is to be determined by the Special Commissioners as an appeal: a case may be demanded.[37] Any adjustments of United Kingdom or "foreign" income tax may extend this period, as well as the period for making assessments.[38]

Effect of Credits on Taxable Income—Where the income tax payable (in respect of foreign securities or other foreign possessions) depends on the amount received in this country, that amount is to be increased by any credit allowed.[39] Where it does not so depend, and any credit is allowed, no deduction is to be made in respect of "foreign income tax" applicable to the same or any other income.[40] Where it does not so depend,

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[29] Para. 4 (1); if the arrangements in question deal only with income tax proper, or only with surtax, the calculation is modified accordingly, see proviso. See also para. 7 (4), note [44].
[30] Para. 4 (2); see pp. 16—19.
[31] Pp. 189—196; 297—298; 806—808.
[32] Pp. 239 *sqq.*, 801—802.
[33] Para. 5, p. 799.
[34] Para. 9, p. 800.
[35] Para. 10.
[36] Para. 11.
[37] Para. 12; see pp. 379, 382 *sqq.*
[38] Para. 13, p. 801.
[39] Para. 7 (2), p. 799; see pp. 210, 222, 230—232.
[40] Para. 7 (3) (a); see pp. 219, 227.

and the income includes a dividend and the arrangements in question provide for taking into account "foreign income tax" not chargeable on the dividend directly or by deduction (*e.g.*, where the foreign income tax merely reduces the profits distributable), the income is to be increased by the amount of foreign tax so taken into account.[41] In either of the last two cases, if the maximum imposed by para. 4 has the effect of reducing the credit, the income is to be reduced by the same amount.[42]

For the purpose of calculating the maximum credit, and the rate which is a factor in that calculation,[43] the total income is to be increased (where it depends on the amount received in this country) by the relevant "foreign income tax" instead of the amount of the credit; and (where it does not so depend) no deduction is made in respect of "foreign income tax," but sub-paras. 3 (b) and 3 (c) above summarised are not to apply.[44]

British Dividends : Deduction of Tax—The provision[45] which prohibits a British company or other body when paying a dividend from deducting tax at a rate which disregards any Dominion relief is withdrawn; and any relief obtained under the double-taxation arrangements sanctioned by Order in Council may also be disregarded.[46] This need not prevent a company, etc., from passing on to its shareholders any of these reliefs, for the terms of General Rule 20, which allows deduction of tax, are permissive only.[47] Even if the relief is passed on, the dividend must nevertheless be increased by the full deduction which is now authorised, in computing the recipient's total income for surtax, as well as (it would appear) for ascertaining whether he is entitled to any of the reliefs.[48] But if he is so entitled, relief or repayment will not be allowed at a rate exceeding the rate of United Kingdom tax borne by the company, etc., after taking the double taxation relief into account.[49] Where an annual payment, or part of one, is payable out of a dividend affected by this last provision, the payer is made liable under General Rule 21 for a somewhat modified tax on the amount so paid.[50]

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[41] Para. 7 (3) (b); the method of arriving at the amount of such tax is laid down in para. 9.
[42] Para. 7 (3) (c); see p. 776 as to the maximum.
[43] Para. 4 (1); see above.
[44] Para. 7 (4); in the former case, "foreign income tax" not charged on a dividend directly or by deduction is to be left out of account.
[45] Act of 1940, s. 27 (5); see pp. 20, 263, 501.
[46] No. 2 Act of 1945, s. 52 (1), (2), (5), p. 789; dividends payable on or before February 20th, 1946, are not affected.
[47] See pp. 259 *sqq.*, 490.
[48] Act of 1940, s. 20 (1), (3); see p. 302 and p. 8.
[49] No. 2 Act of 1945, s. 52 (2) (a); the distinction appears strange, but there seems to be no escape from it, for s. 20 of the Act of 1940 is not amended.
[50] S. 52 (4); see p. 196.

The " net United Kingdom rate " is to be shown on dividend warrants in addition to the particulars already required.[81]

THE FINANCE (NO. 2) ACT, 1945

(9 GEO. 6. c. 13)

[*20th December*, 1945]

. . . . . .

PART II—INCOME TAX

15. *Income Tax for* 1946-47—(1) Income tax for the year 1946-47 shall be charged at the standard rate of nine shillings in the pound, and, in the case of an individual whose total income exceeds two thousand pounds, shall be charged in respect of the excess at rates in the pound which respectively exceed the standard rate by the amounts specified in the second column of the following Table:—

TABLE

For every pound of—	s.	d.
the first five hundred pounds of the excess	2	0
the next five hundred pounds of the excess	2	6
the next one thousand pounds of the excess	3	6
the next one thousand pounds of the excess	4	6
the next one thousand pounds of the excess	5	6
the next two thousand pounds of the excess	6	6
the next two thousand pounds of the excess	7	6
the next two thousand pounds of the excess	8	6
the next three thousand pounds of the excess	9	6
the next five thousand pounds of the excess	10	0
the remainder of the excess	10	6

(2) All such enactments as had effect with respect to the income tax charged for the year 1945-46, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1946-47.

16. *Higher rates of income tax for* 1945-46—Income tax for the year 1945-46 shall be charged at rates exceeding the standard rate in the case of individuals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the year 1945-46 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

17. *Increase of certain reliefs for* 1946-47 *and subsequent years*—(1) Subsection (2) of section forty of the Finance Act, 1927 . . . shall, as respects the year 1946-47 and all subsequent years of assessment, have effect [*as printed, p.* 543]

(2) Section eighteen of the Finance Act, 1920 . . . shall, as respects the year 1946-47 and all subsequent years of assessment, have effect [*as printed, p.* 496].

(3) Section nineteen of the Finance Act, 1935 . . . shall, as respects the year 1946-47 and all subsequent years of assessment, have effect [*as printed, p.* 576].

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[81] S. 52 (2) (b); directions for calculating that rate are given in sub-ss. 2 (a), 3. 5. See p. 280.

(4) Section seven of the Finance Act, 1941 (which provides for the crediting after the war, of certain amounts of income tax) shall not apply to tax for the year 1946-47 or any subsequent year of assessment.

18. *Appointed day for Part IV of Finance Act, 1944, and Income Tax Act, 1945*—In Part IV of the Finance Act, 1944 (which relates to allowances for expenditure on scientific research) and in the Income Tax Act, 1945, the expression "the appointed day" means the sixth day of April, nineteen hundred and forty-six, and the definitions of that expression in subsection (1) of section thirty-one of the Finance Act, 1944, and subsection (1) of section sixty-eight of the Income Tax Act, 1945, are hereby repealed.

20. *Tax free annuities, etc.*—(1) The amendments of section twenty-five of the Finance Act, 1941, specified in this section shall have effect for the purpose of rendering the said section twenty-five (which provides for a reduction of tax free annuities, etc., in years of assessment where the standard rate of income tax is ten shillings in the pound) applicable with modifications to all years of assessment for which the standard rate of income tax is over five shillings and sixpence in the pound.

(2) In subsection (1) of the said section twenty-five, for the words "is ten shillings" there shall be substituted the words "exceeds five shillings and six pence."

(3) For the words "twenty twenty-ninths" wherever they occur in the said section twenty-five there shall be substituted the words "the appropriate fraction"; and at the end of the said section twenty-five there shall be inserted the following subsection—

> "(6) In this section, the expression 'the appropriate fraction' means, in relation to any year of assessment, the fraction the denominator of which is twenty-nine and the numerator of which is twenty-nine decreased by one for every complete sixpence in the pound by which the standard rate of income tax for the year exceeds five shillings and six pence in the pound."

(4) In sub-paragraph (ii) of paragraph (b) of subsection (4) of the said section twenty-five, for the words "ten shillings in the pound" there should (*sic*) be substituted the words "the standard rate of tax for the year of assessment in which the payment falls to be made."

(5) Nothing in this section affects any payments falling to be made before the sixth day of April, nineteen hundred and forty-one.

21. *Application of Rules 19 and 21 of the General Rules to interest, etc., payable by local authorities*—(1) Subject to the provisions of this section, in determining for the purpose of Rules 19 and 21 of the General Rules whether any sum payable by a local authority is payable wholly out of profits or gains brought into charge to tax, all profits or gains of the authority for the year of assessment in question shall, notwithstanding any restriction imposed by law upon the application of moneys belonging to the authority, be treated as being available for the payment of any sums to which those Rules apply which fall to be paid by the authority.

(2) Subject to the provisions of this section, where, in any year of assessment, a local authority occupy any land and any tax for that year under Schedule A in respect thereof is, or apart from the said Rules would be, ultimately borne by them, there shall be deemed for the purposes of those Rules to be available to them for that year for the payment of any sums to which those Rules apply which fall to be paid by them an amount equal to the net amount on which tax is or would be borne by them as aforesaid.

(3) Where any sum—

(a) has been or is to be reimbursed to a local authority by the Crown or by any other person; or

(b) is taken into account in computing a deficiency which the Crown or any other person is under a legal obligation to make good to a local authority; or

(c) is charged to capital,

profits or gains which, apart from the provisions of this section, would not have been treated as available for the payment of that sum shall not be so treated by virtue of this section:

Provided that where any sum taken into account in computing such a deficiency as aforesaid exceeds the amount of the deficiency, this subsection shall not prevent profits or gains from being treated as available for the payment of the excess.

(4) In this section, the expression "local authority"—

(a) in relation to England, means any authority being, within the meaning of the Local Loans Act, 1875, an authority having power to levy a rate, and includes any joint board or joint committee all the constituent members of which are such authorities as aforesaid;

(b) in relation to Scotland, means any county council, town council, or district council, or any other authority within the meaning of the Local Authorities Loans (Scotland) Act, 1891, and includes any joint board or joint committee which is appointed under any enactment, order or scheme, and of which all the constituent authorities are such local authorities as aforesaid; and

(c) in relation to Northern Ireland, means the council of any county, county or other borough, urban or rural district, a board of guardians, the commissioners of a town, an education authority, and any committee or board appointed wholly or partly by a county or district council or board of guardians, or by several such councils or boards jointly:

Provided that, for the purposes of this section the Mayor and commonalty and citizens of the City of London and the Common Council of the City of London shall be deemed to be one local authority.

(5) The preceding provisions of this section shall have effect as respects the year 1944-45 and all subsequent years of assessment.

(6) Rule 6 of the Miscellaneous Rules applicable to Schedule D (which provides for charging the proper officer with the tax payable on any interest of money charged on any rates or assessments not chargeable as profits) is hereby repealed.

22. *Amendments as to carrying forward of losses*—(1) Section thirty-three of the Finance Act, 1926 (which authorises the carrying forward of losses sustained by a person in any trade, profession or vocation, and the deduction or setting off of those losses from or against the amount of profits or gains on which he is assessed under Schedule D in respect of that trade, profession or vocation for the six following years of assessment), and any other enactment extending, amending or applying the said section thirty-three, shall, in its application to any case in which the six following years of assessment include any of the relevant years as hereinafter defined, have effect, and be deemed always to have had effect, as if for any reference to the six following years there were substituted a reference to those six years plus such number of the years of assessment immediately succeeding those six years as is equal

to the number of the relevant years which are subsequent to the year in which the loss was sustained.

For the purposes of this subsection, the relevant years are the year 1939-40 and every subsequent year of assessment up to and including the year 1945-46.

(2) Where, in any year of assessment, relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under the said section thirty-three because the amount of the profits or gains of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends on investments arising in that year, being interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts, shall be treated for the purposes of the application of the said section thirty-three as if they were profits or gains on which the person carrying on the trade was assessed under the said Case I in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise:

Provided that, for the purpose of determining whether any, and, if so, what, relief can be given under this subsection for any year of assessment, the loss which may be carried forward under the said section thirty-three shall be computed in the case of life assurance business or capital redemption business (as defined for the purposes of section twenty-seven of the Finance Act, 1938) as if it were being computed for the purpose of setting it off against the profits of another business carried on by the same person.

(3) Any dispute as to whether any, and, if so, what, relief can be given under the last preceding subsection for any year of assessment shall be heard and determined by the Commissioners concerned in like manner as in the case of an appeal against an assessment under Case I of Schedule D in respect of the trade in question, and the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

23. *War gratuities*—War gratuities paid in respect of service in connection with the present war either—

(a) under any Order in Council, Royal Warrant, King's Order, Army Order or Air Ministry Order to members of the armed forces of the Crown or any of the women specified in the First Schedule to the Disabled Persons (Employment) Act, 1944; or

(b) under arrangements certified by the Treasury to be arrangements providing similar benefits to members of the armed forces of the Crown raised outside the United Kingdom to whom paragraph (a) of this section does not apply or to women employed in or in connection with any such armed forces; or

(c) under arrangements certified by the Treasury to be arrangements providing similar benefits to—

(i) special constables appointed under the Special Constables Act, 1831, or section one hundred and ninety-six of the Municipal Corporations Act, 1882, or under section ninety-six of the Burgh Police (Scotland) Act, 1892, as amended or extended by any subsequent enactment or any similar provision contained in a local Act, or members of the Police War Reserve, the Women's Auxiliary Police Corps or the Police Auxiliary Messenger Service; or

(ii) members of the National Fire Service, the Auxiliary Fire Service or the fire brigade of a local authority; or

(iii) members of the Civil Defence Reserve or the civil defence

ambulance, decontamination, first aid party, first aid post, messenger, report and control, rescue or wardens' services; or

(iv) members of the fireguard service; or

(v) members of the Royal Observer Corps; or

(vi) members of the Auxiliary Coastguard; or

(vii) persons in Northern Ireland similar to any of the persons specified in any of the preceding sub-paragraphs; or

(viii) employees of the Navy, Army and Air Force Institutes serving with the Royal Navy or in the Royal Army Service Corps Expeditionary Force Institutes or in the Auxiliary Territorial Service Expeditionary Force Institutes; or

(ix) employees of the War Organisation of the British Red Cross Society and Order of St. John of Jerusalem certified by the Treasury to be employed on conditions of service analogous to those of any of the persons specified in any of the preceding sub-paragraphs,

shall not be regarded as income for any of the purposes of the Income Tax Acts for any year of assessment, including a year of assessment before the year 1945-46.

24. *Treatment of certain payments made under redundancy schemes*— (1) Subject to the provisions of this section, where under any scheme which is for the time being certified or has at any time been certified by the Board of Trade under section twenty-five of the Finance Act, 1935 (which provides for the deduction, in computing the profits or gains of a trade, of contributions paid under redundancy schemes which are certified under that section), any payment is made, on or after the sixth day of April, nineteen hundred and forty-five, to a person carrying on a trade to which the scheme relates, that payment shall be treated for the purposes of the Income Tax Acts as a trading receipt of the trade, and shall accordingly be taken into account in computing the profits or gains of the trade for those purposes.

(2) Where it is shown in accordance with the provisions of Part II of the Fourth Schedule to this Act that the payments which, on or after the said date, have been made under such a scheme in respect of a trade, have been made wholly or partly in respect of damage in respect of which no relief may be given under the Income Tax Acts, then, subject to and in accordance with the provisions of that Schedule, relief shall be given in respect of those payments by reducing the amounts which are to be treated as trading receipts of the trade under the preceding subsection, but, where such relief is given, the said section twenty-five shall, in relation to contributions subsequently paid under the scheme in respect of the trade, have effect subject to the modifications specified in Part III of that Schedule.

(3) The provisions of this section and of the said Schedule shall apply in relation to any payment made to a person who has ceased to carry on a trade to which any such scheme as aforesaid relates as they apply in relation to payments made to a person carrying on such a trade, subject to the modification that so much of that payment as falls to be treated as a trading receipt by virtue of the said provisions shall be deemed for the purposes of those provisions to have been made to him on the last day on which he was engaged in carrying on the trade.

(4) In determining, for the purposes of this section and of the said Schedule—

(a) whether any trade has ceased to be carried on; or

(b) whether any contribution is paid in respect of a trade in respect of which a payment has been made; or

(c) whether any payment is made in respect of a trade in respect of which a contribution has been paid,

no regard shall be had to any event which, by virtue of any of the provisions of Rule 11 of the Rules applicable to Cases I and II of Schedule D, is to be treated as effecting a discontinuance of a trade.

(5) In this section and in the said Schedule, the expression "payment" does not include a payment made by way of repayment of contributions.

25. *Effect of cancellation of certificates granted under Finance Act, 1935, s. 25*— (1) Where any certificate granted with respect to a scheme under section twenty-five of the Finance Act, 1935, is cancelled by the Board of Trade after the passing of this Act, and any deductible contributions paid in furtherance of the scheme have not been repaid at the expiration of one year from the cancellation, the body of persons carrying out the scheme shall, for the year of assessment in which the said year expires, be charged to income tax under Case VI of Schedule D upon the aggregate amount of the deductible contributions which have not been repaid at that time:

Provided that the charge shall not be made if the total amount of any contributions, other than deductible contributions, which have been paid under the scheme and have not been repaid before that time is greater than the available resources of the scheme, and shall not in any case be made upon an amount greater than the excess, if any, of those resources over that total amount.

In this subsection the expression "available resources", in relation to any scheme, means a sum representing the total funds held for the purposes of the scheme at the expiration of one year from the cancellation of the certificate plus a sum representing any funds held for the purposes of the scheme which, during that year, have been applied otherwise than in accordance with the provisions of the scheme as in force when the certificate was granted.

(2) Where the body of persons carrying out a scheme are charged to income tax by virtue of the preceding subsection, and, after the expiration of the said year, any deductible contribution paid in furtherance of the scheme is repaid, the amount upon which the charge is made shall be reduced by the amount repaid, and all such repayments of tax shall be made as are necessary to give effect to the provisions of this subsection.

(3) In this section, the expression "contribution" includes a part of a contribution, and the expression "deductible contribution" means a contribution allowed to be deducted under the said section twenty-five, any reduction thereof under Part III of the Fourth Schedule to this Act being left out of account.

(4) Subsection (5) of the said section twenty-five (which relates to the order in which contributions are to be deemed to be repaid) shall have effect for the purposes of this section as it has effect for the purposes of that section.

26. *Statutory redundancy schemes* - (1) The following provisions, that is to say—

(a) subsections (4) and (5) of section twenty-five of the Finance Act, 1935 (which provide, in relation to schemes certified under that section, that deductions made for contributions shall be treated as unauthorised deductions if the contributions are repaid); and

(b) the two last preceding sections of this Act and the Fourth Schedule to this Act,

shall, subject to the adaptations specified in subsection (2) of this section, apply in relation to a statutory redundancy scheme as they apply in relation to a scheme certified under the said section twenty-five.

(2) The said adaptations are as follows, that is to say—

(a) for any reference to a contribution allowed to be deducted under the said section twenty-five there shall be substituted a reference to a contribution allowed to be deducted under any of the provisions of the Income Tax Acts;

(b) any provision that the said section twenty-five shall, in relation to contributions, have effect subject to modifications, shall be construed as a provision that so much of the Income Tax Acts as authorises the deduction of contributions shall, in relation to the contributions in question, have effect subject to to the modifications in question.

(c) for any reference to the cancellation of a certificate with respect to a scheme there shall be substituted a reference to the scheme ceasing to have effect; and

(d) for any reference to the provisions of the scheme as in force when the certificate was granted there shall be substituted a reference to the provisions of the scheme as in force when contributions were first paid thereunder.

(3) In this section the expression "a statutory redundancy scheme" means a scheme for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act (whether passed before or after this Act).

27. *Adjustment of liability to income tax consequential on adjustments of excess profits tax or the national defence contribution*—(1) Where any adjustment is made of the liability of any person to excess profits tax or the national defence contribution, any consequential adjustment of the liability of that or any other person to income tax (including surtax) for any year of assessment may be made, whether by way of additional assessment, repayment of tax or otherwise, notwithstanding that the time limited by the Income Tax Acts for the making of assessments or claims for repayment of tax has expired.

(2) Section forty-one of the Finance Act, 1927 (which contains provisions with respect to the making and determination of claims) shall apply in relation to claims for relief from income tax (other than surtax) consequential on any adjustment as respects excess profits tax or the national defence contribution as it applies in relation to claims for deductions of tax under section forty of that Act:

Provided that any such claim to which objection is made shall, if the claimant so elects when he makes the claim, be heard and determined by the Special Commissioners, and subsection (2) of the said section forty-one shall have effect accordingly.

28. *Incorrect returns*—If a person delivers to any surveyor a list, declaration or statement on a form prepared for the purpose by direction of the Commissioners of Inland Revenue, he shall be deemed for the purposes of section one hundred and seven of the Income Tax Act, 1918 (which, amongst other things, provides a penalty for certain incorrect returns) to have been required by a particular notice under the Income Tax Acts to prepare and deliver that list, declaration or statement, and the time limited for the delivery thereof shall be deemed for the purposes of the said section to have expired on the date of its delivery to the said surveyor.

. . . . . .

PART IV—EXCESS PROFITS TAX POST-WAR REFUNDS

Date of payment

29. *Time for repayment of post-war refunds*—Subject to the provisions of this Part of this Act, the sums payable under subsection (1) of section twenty-

eight of the Finance Act, 1941, as amended by section thirty-seven of the Finance Act, 1942 (hereafter in this Part of this Act referred to as "post-war refunds") shall be paid as soon as may be after the final ascertainment and satisfaction of the total liability of the person in question to excess profits tax and the national defence contribution for all relevant chargeable accounting periods:

Provided that, if the Commissioners of Inland Revenue think fit and the requirements of the four next following sections are complied with, they may, before the final ascertainment and satisfaction of the said total liability, make payments on account of any post-war refund which, in their opinion, is likely to be found due.

Income Tax

43. *Income tax on post-war refunds*—Subject to the provisions of the two next following sections, income tax shall be charged for the year 1946-47 on all sums paid as, or on account of, post-war refunds, whenever those sums are paid, and shall be so charged by deduction of tax at the standard rate for that year, and any sums so paid shall be deemed to be income for all the purposes of the Income Tax Acts.

44. *Option to spread refunds backwards for income tax purposes*—(1) Where a post-war refund is paid to an individual, and in the relevant chargeable accounting periods that individual carried on the original trade or business either alone or in partnership with any other person, he may claim that the income tax (including surtax) payable by him by reason of the receipt of the refund shall be reduced to such extent as may be just having regard to the total income tax (including surtax) which would have been payable by him if the amounts of refund referable to those periods had been treated for the purposes of income tax as additions to the profits or gains of the trade or business for those periods or, as the case may be, as additions to his share thereof, and charged to income tax (including surtax) accordingly.

(2) Where the amount of income tax which would have been payable as aforesaid is affected by any allowance falling to be made under the provisions of the Income Tax Acts relating to wear and tear and the carrying forward of losses (including the provisions of section nineteen of the Finance Act, 1928) such adjustments, if any, shall be made—

(a) in computing the relief falling to be granted under subsection (1) of this section; and

(b) in computing the allowances falling to be granted under any of the said provisions of the Income Tax Acts for the year 1947-48 or any subsequent year of assessment,

as are necessary to secure that the same wear and tear, loss or other amount is not taken into account so as to increase the relief under the said subsection (1) and also allowed under the said provisions of the Income Tax Acts.

(3) References in this section to the income tax (including surtax) payable by an individual include, in cases where profits of a wife are deemed to be profits of her husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.

(4) A claim under this section must be made to the Commissioners of Inland Revenue not later than the fifth day of April, nineteen hundred and forty-seven, or within such further period as those Commissioners may allow, and section nineteen of the Finance Act, 1925 (which relates to the making and allowing of claims for certain reliefs and to rights of appeal) shall apply in relation to claims under this section as it applies to the claims mentioned in that section.

46. Option to have refunds treated as profits of 1947-48—(1) Where the net amount of any post-war refund is to be used for the purpose of a trade the profits or gains of which are assessable to tax for the year 1947-48 under Case I of Schedule D or would be so assessable if there were any profits or gains thereof for that year, then, if all the persons who are or would be assessable to tax as aforesaid in respect of those profits or gains for that year and the person to whom the refund is payable, by notice in writing given to the surveyor not later than the end of the year nineteen hundred and forty-eight, or within such further period as the Commissioners of Inland Revenue may allow, so elect—

(a) in lieu of the refund being chargeable to income tax for the year 1946-47, it shall be charged to income tax for the year 1947-48 as if it were profits or gains of the trade, and shall be so charged by means of an assessment for the year 1947-48 on the profits or gains of the trade in addition to any other assessment falling to be made thereon for that year; but

(b) tax at the standard rate for the year 1946-47 shall nevertheless be deducted from any sum paid as, or on account of, the refund and the amount deducted shall be treated as if it had been paid by the persons chargeable under paragraph (a) of this subsection, and had been so paid by them on account of income tax in respect of the profits or gains of the trade for the year 1947-48:

Provided that this subsection shall not apply unless the persons or one or more of the persons who carried on the original trade or business in the relevant chargeable accounting periods also carry on the trade in connection with which the refund is to be used, either alone or in partnership with any other person, for the whole or any part of the year 1947-48.

(2) If during the year 1947-48 there is any change in the persons carrying on the trade for the purposes of which the sum repaid is to be used and, by virtue of the change, the trade is, for the purposes of Rule 11 of the Rules applicable to Cases I and II of Schedule D, treated as discontinued, the references in subsection (1) of this section to the trade shall be construed as references to the trade carried on up to the date of the discontinuance, or, where there is more than one discontinuance in the said year, up to the first of the discontinuances.

(3) The preceding provisions of this section shall, with the necessary adaptations, apply where the net amount of any post-war refund is to be used for the purposes of more than one trade as it applies where the net amount of a post-war refund is to be used for the purposes of one trade, so, however, that an election can only be made with respect to the whole of the refund and all persons who are or would be assessable to tax under Case I of Schedule D in respect of the profits or gains of any of the trades must be parties to the giving of the notice of the election.

(4) No election shall be valid under this section in relation to any refund if a claim is made and allowed in relation thereto under the last preceding section.

Miscellaneous

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47. Set-off of refunds against excess profits tax—Where after the end of the year nineteen hundred and forty-five, excess profits tax is due and payable in respect of any relevant chargeable accounting period and, if that tax were paid, a sum would (on the giving, or giving and approval, of the requisite undertakings and authorities) be payable for or on account of a post-war refund, the Commissioners may, if they think fit and if the requisite under-

takings and authorities are given, or given and approved, give credit for the amount of the sum payable as aforesaid, after deduction of tax at the standard rate for the year 1946-47, against the same amount of the excess profits tax which is due and payable as aforesaid, and, where credit is so given, the amount for which credit is given shall be deemed to have been paid to the Commissioners and repaid by them and the said undertakings and authorities shall, with the necessary modifications, have effect accordingly:

Provided that the amount deemed to have been repaid by the Commissioners shall for the purposes of income tax be treated as a payment made after deduction of tax at the standard rate for the year 1946-47.

. . . . . .

49. *Special cases*—The provisions of this Part of this Act and of section twenty-eight of the Finance Act, 1941 (as amended by any subsequent enactment) shall, in relation to partnerships, members of groups of companies and tax paid under section twenty-four of the Finance Act, 1943 (which relates to sales of stock at an under-value), have effect subject to the provisions of the Sixth Schedule to this Act.

50. *Interpretation of Part IV*—(1) In this Part of this Act and in the Sixth Schedule to this Act, the following expressions have, except so far as the context otherwise requires, the meanings hereby respectively assigned to them, that is to say

"the original trade or business" means, in relation to a post-war refund, the trade or business, tax on the profits of which is or is to be refunded;

"relevant chargeable accounting period" means any chargeable accounting period (for the purposes of excess profits tax) beginning on or after the first day of April, nineteen hundred and forty and ending on or before the thirty-first day of December, nineteen hundred and forty-five, or any part of a chargeable accounting period, being a part beginning on or after the said first day of April and ending on or before the said thirty-first day of December, which falls to be treated for the purposes of section twenty-eight of the Finance Act, 1941, as a separate chargeable accounting period;

"net amount" means, in relation to a post-war refund, the gross amount thereof less the income tax deducted therefrom, and, where the payment is made otherwise than to a body corporate, less also any surtax ascribable to the payment of the refund, the amount of surtax so ascribable being ascertained on the basis that the refund is to be treated as the highest part of the income of the person to whom the payment is made;

"group of companies," "the principal company" and "subsidiary member" have the meanings respectively assigned to them by subsection (1) of section twenty-eight of the Finance Act, 1940.

(2) References in this Part of this Act to the national defence contribution for a relevant chargeable accounting period shall, where the relevant chargeable accounting period is not also a chargeable accounting period for the purposes of the national defence contribution, be taken to be references to a sum made up by apportioning and aggregating the amounts of the national defence contribution paid or payable in respect of any chargeable accounting period (as defined for the purposes of the national defence contribution) which falls wholly or partly within the relevant chargeable accounting period

Any apportionment required to be made by this subsection shall be made by reference to the number of months or fractions of months in the period to which the apportionment relates.

(3) Any reference in this Part of this Act or in the Sixth Schedule to this Act to the relevant chargeable accounting periods to which a post-war refund is referable shall be construed as a reference to the relevant chargeable accounting periods in which there was extra tax, and any reference in this Part of this Act or in the said Sixth Schedule to the amount of refund which is referable to any such period shall be construed as a reference to an amount which bears to the total amount of the refund the same proportion as the extra tax in that period bears to the sum of the amounts of extra tax in all the periods to which the refund is referable.

For the purposes of this subsection, if the excess profits tax for any of the relevant chargeable accounting periods exceeds the national defence contribution for that period, there shall be deemed to have been extra tax for that period equal to whichever of the two following amounts is the smaller, that is to say—

(a) twenty per cent. of the excess profits tax for the period; and
(b) the amount by which the excess profits tax for the period exceeds the national defence contribution for the period:

Provided that, if the national defence contribution is equal to or exceeds the excess profits tax in the case of all the relevant chargeable accounting periods, there shall be deemed to have been extra tax for all the chargeable accounting periods for which there was excess profits tax, equal, in the case of each such period, to twenty per cent. of the excess profits tax for that period.

In determining for the purposes of this subsection whether there is any, and, if so, what excess profits tax for any period, any national defence contribution payable for that or any other period shall be disregarded except in computing capital and any relief for any deficiency of profits occurring in any other chargeable accounting period shall be altogether disregarded, and in determining for the said purposes whether there is any, and, if so, what national defence contribution for any period, excess profits tax shall be altogether disregarded.

(4) . .

Part V—Relief from Double Taxation

51. *Agreements for relief from double taxation of income*—(1) If His Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, then, subject to the provisions of this Part of this Act, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax . . so far as they provide for relief from tax, or for charging the income arising from sources in the United Kingdom to persons not resident in the United Kingdom, determining the income to be attributed to such persons and their agencies, branches or establishments in the United Kingdom, or determining the income to be attributed to persons resident in the United Kingdom who have special relationships with persons not so resident.

(2) On the making of an Order in Council under this section with respect to any arrangements relating to a Dominion as defined for the purposes of section twenty-seven of the Finance Act, 1920 (which provides for relief in respect of Dominion income tax), the said section twenty-seven shall cease to have effect as respects that Dominion except in so far as the arrangements otherwise provide.

. . . . . .

(4) The provisions of the Seventh Schedule to this Act shall have effect where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.

(5) Where, under any arrangements which have effect by virtue of this section, relief may be given either in the United Kingdom or in the territory with the Government of which the arrangements are made in respect of any income, and it appears that the assessment to income tax made in respect of the income is not made in respect of the full amount thereof or is incorrect having regard to the credit, if any, which falls to be given under the arrangements, any such additional assessments may be made as are necessary to ensure that the total amount of the income is assessed and the proper credit, if any, is given in respect thereof, and where the income is entrusted to any person in the United Kingdom for payment any such additional assessment may be made on the recipient of the income under Case VI of Schedule D.

(6) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act or before the making of the arrangements and provisions as to income which is not itself subject to double taxation, and the preceding provisions of this section shall have effect accordingly

52. *Deduction of income tax from dividends*—(1) This section applies to any dividend payable more than two months after the passing of this Act, being a dividend from which deduction of tax is authorised by Rule 20 of the General Rules, and in this section the expression "the company" means a body of persons paying a dividend to which this section applies.

(2) Subsection (5) of section twenty-seven of the Finance Act, 1920 (which limits the rate at which tax may be deducted from dividends) shall not apply to any dividend to which this section applies, and the amount of tax which is authorised by Rule 20 of the General Rules to be deducted from any such dividend shall be determined without taking into account any reduction, by reason of double taxation relief, of the United Kingdom income tax payable directly or by deduction by the company, but—

(a) notwithstanding anything in the Income Tax Acts, no relief or repayment in respect of the tax deducted or authorised to be deducted from any such dividend shall be allowed at a rate exceeding the rate (hereinafter referred to as "the net United Kingdom rate") of the United Kingdom income tax payable directly or by deduction by the company after taking double taxation relief into account; and

(b) where the United Kingdom income tax payable directly or by deduction by the company is affected by double taxation relief, the particulars to be given by the company in the statement required by section thirty-three of the Finance Act, 1924, shall (in addition to the particulars required to be given apart from this section) include particulars of the net United Kingdom rate.

(3) Where a dividend to which this section does not apply has been paid, whether before or after the passing of this Act, and any double taxation relief would have fallen to be taken into account in relation to that dividend if this section had applied thereto, that relief shall, unless it is relief which has been taken into account for the purposes of subsection (5) of the said section twenty-seven, be taken into account as far as possible in determining the net United Kingdom rate in relation to the first dividend payable by the company to which this section applies, and any part of that relief which cannot be so taken into account shall as far as possible be taken into account in relation to the next succeeding dividend, and so on.

(4) Where the whole or any part of any annual payment is payable out of a dividend to which this section applies, and the rate of relief or repayment allowable in respect of the tax deducted or authorised to be deducted from the dividend is affected by double taxation relief, the annual payment, or that part thereof, as the case may be, shall be deemed to be paid out of profits or gains not brought into charge to tax and Rule 21 of the General Rules shall apply accordingly, but the tax chargeable under the said Rule on the person making the payment shall be reduced by an amount equal to tax on the payment or part of the payment at the net United Kingdom rate applicable to the dividend.

(5) In this section the expression "double taxation relief" means any credit for foreign income tax which is allowable against United Kingdom income tax by virtue of arrangements having effect under this Part of this Act and any relief allowable under the provisions of section twenty-seven of the Finance Act, 1920, including any credit or relief which has been taken into account for the purposes of determining the net United Kingdom rate applicable to any dividends received by the company.

53. *Power to make regulations*—The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the preceding provisions of this Part of this Act or any arrangements having effect thereunder and may, in particular, by those regulations provide—

(a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled thereto;

(b) for prescribing the principles upon which the net United Kingdom rate is to be determined for the purposes of the last preceding section; and

(c) for authorising, in cases where tax deductible from any periodical payment has, in order to comply with any such arrangements, not been deducted and it is discovered that the arrangements do not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

55. *Disclosure of information*—(1) Where any arrangements have effect by virtue of this Part of this Act, the obligation as to secrecy imposed by any enactment shall not prevent the Commissioners of Inland Revenue or any authorised officer of the Commissioners of Inland Revenue from disclosing to any authorised officer of the Government with which the arrangements are made such information as is required to be disclosed under the arrangements.

(2) Where a person beneficially entitled to the income from any securities, as defined by section eighteen of the Finance Act, 1939 (which empowers the Special Commissioners to obtain information as to income from securities) is resident in a territory to which arrangements with respect to income tax which have effect under this Part of this Act relate, subsection (5) of that section shall not exempt any bank from the duty of disclosing to the Special Commissioners particulars relating to the income of that person.

56. *Supplementary*—(1) Any Order in Council made under this Part of this Act may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to His Majesty to be necessary or expedient.

(2) Before any Order proposed to be made under this Part of this Act is submitted to His Majesty in Council, a draft thereof shall be laid before the

Commons House of Parliament, and the Order shall not be so submitted unless an Address is presented to His Majesty by that House praying that the Order be made.

PART VI—MISCELLANEOUS

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58. *Amendment of law as to exceptional depreciation allowances* . . . (2) The provisions of Part II of the Eighth Schedule to this Act shall, in relation to allowances under section nineteen of the Finance Act, 1941, have effect and be deemed always to have had effect in substitution for the provisions of section fifty-eight and subsections (2) to (5) of section fifty-nine of the Income Tax Act, 1945, and accordingly the said sections fifty-eight and fifty-nine shall have effect and be deemed always to have had effect subject to the following amendments—[*see ss.* 58, 59, *as printed, pp.* 731, 733].

. . .

59. *Determination of questions affecting allowances for exceptional depreciation* —(1) In this section the expression "exceptional depreciation allowance" means any allowance, other than an allowance which, by the terms of the enactments relating thereto, is expressed to be provisional only,—

(a) under section nineteen of the Finance Act, 1941 . . .

(2) The question as to whether any, and, if so, what, exceptional depreciation allowance falls to be made in respect of any asset or group of assets shall be determined by the Commissioners of Inland Revenue

(3) The Commissioners shall give notice of their decision to the person to whom the exceptional depreciation allowance falls or would fall to be made, and where, for the purposes of their decision, the Commissioners decide—

(a) how much of the price paid on a sale of two or more assets sold together is properly attributable to any of those assets; or

(b) what is the relevant price (as defined for the purposes of paragraph 8 of Part II of the Eighth Schedule to this Act) of any asset or group of assets,

they shall give notice of their decision on that question to the said person, and, if it appears to them that the same question is also material in relation to the liability of any other person to income tax, excess profits tax or the national defence contribution, shall also give notice of their decision thereon to that other person.

A person to whom notice of any decision has been given under this subsection shall not, in any proceedings relating to his liability to income tax, . . . be entitled to call that decision in question otherwise than in accordance with the provisions of this section relating to appeals.

(4) Any person to whom such a notice is given may appeal against the decision to the Special Commissioners, and the provisions of the Income Tax Acts relating to appeals against assessments, including the provisions relating to the statement of cases for the opinion of the High Court on a point of law, shall, with the necessary modifications, have effect in relation to any such appeal as if it were an appeal against an assessment under Schedule D signed and allowed by the Special Commissioners, and as if the notice were a notice of that assessment:

Provided that upon any such appeal all persons who have received notices under this section in connection with the decision under appeal shall be entitled to appear and be heard, and, in relation to the statement of a case, shall have the same rights as the appellant, and, when the questions under appeal are finally decided, either by the Special Commissioners or by the Court, that decision shall not be called in question by any of the said persons in any proceedings relating to his liability to income tax . . .

(5) There shall be made all such adjustments, whether by way of repayment of tax or otherwise, and all such assessments, as are required in consequence of the decision of any question under this section, and, in particular, there shall be made all such assessments as may be necessary for securing that the amount of tax ultimately borne by any person is what it would have been if no provisional allowances had been made and if any exceptional depreciation allowance which, under the decision, falls to be made to him or to any other person had been made immediately upon the conclusion of the year of assessment . . . for which it falls to be made.

Notwithstanding any provision of the Income Tax Acts limiting the time for claiming adjustments or the time for making assessments, any adjustment or assessment (including any consequential assessment to surtax) required to be made under this subsection may be made at any time

(6) Subsection (6) of section nineteen of the Finance Act, 1941, shall not have effect in relation to any adjustments or assessments which are required in consequence of any decision under this section.

(7) Any notice to be given by the Commissioners under this section may be given on behalf of the Commissioners by any surveyor appointed for the purposes of the Income Tax Acts

(8) This section shall have effect both in relation to questions arising before, and in relation to questions arising after, the passing of this Act.

(9) Section sixty-one of the Income Tax Act 1945, shall not apply as respects any apportionment or determination which is material as respect the right of any person to an exceptional depreciation allowance

69. *Appointment of collectors of taxes, etc. for City of London*—(1) The power to appoint collectors of taxes . . . for the division of the City of London shall be transferred to and vested in the Commissioners of Inland Revenue;

[*see Act of* 1942, 10*th Sched pp* 672-673.]

. . . . . .

82. *Short title, construction, extent and repeals*—(1) This Act may be cited as the Finance (No 2) Act, 1945

(3) Part II of this Act and, so far as they relate to income tax, Parts IV, V and VI thereof, shall be construed as one with the Income Tax Acts.

. . . . . .

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act

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SCHEDULES

FOURTH SCHEDULE
(Sections 24, 25 and 26)

INCOME TAX RELIEFS IN CONNECTION WITH REDUNDANCY SCHEMES

PART I.—PRELIMINARY

1.—(1) In this Schedule—

(a) the expression "scheme" means a scheme which is for the time being certified or has at any time been certified by the Board of Trade under section twenty-five of the Finance Act, 1935;

(b) the expression "payment" means a payment made under a scheme on or after the sixth day of April, nineteen hundred and forty-five,

being a payment made to a person carrying on a trade to which the scheme relates;

(c) the expression "the person chargeable" means, in relation to any such payment, the person liable to pay any income tax which may fall to be paid by reason of the receipt of the payment;

(d) the expression "damage" includes any loss, liability, expense or other burden, and references to the amount of any damage are references to the sum which would be fair compensation for that damage;

(e) the expression "contribution" includes part of a contribution, but does not include any contribution made before the sixth day of April, nineteen hundred and forty-five, and the expression "deductible contribution" means a contribution allowed to be deducted under the said section twenty-five, any reduction thereof under Part III of this Schedule being left out of account; and

(f) the expression "asset" includes a part of an asset

(2) Subsection (5) of the said section twenty-five (which relates to the order in which contributions are to be deemed to be repaid) shall have effect for the purposes of this Schedule as it has effect for the purposes of that section.

PART II.—RELIEF IN RESPECT OF CERTAIN PAYMENTS

2. The question whether any, and, if so, what, relief is to be given shall be determined separately in relation to each payment made under the scheme in respect of the trade, but for the purpose of determining that question regard shall be had, as hereinafter provided, to the sum (hereafter in this Schedule referred to as "the total payment") produced by adding the amount of the payment to the amount of any payments previously so made.

3. No relief shall be given in respect of the payment unless the person chargeable shows—

(a) the amount of the damage in respect of which the total payment has been made, and

(b) how much of that amount is referable to damage in respect of which no relief may be given under the Income Tax Acts.

4. No relief shall be given in respect of the payment unless the total payment, or the amount of the damage in respect of which the total payment has been made, whichever is the smaller, exceeds the aggregate amount of the deductible contributions which have been paid in furtherance of the scheme in respect of the trade in question before the payment is made, exclusive of any contributions which have been repaid before the payment is made

5. The amount of the reduction to be made in respect of the payment shall be arrived at by—

(a) ascertaining the sum which bears to the excess mentioned in paragraph 4 of this Schedule the same proportion that the amount mentioned in sub-paragraph (b) of paragraph 3 thereof bears to the amount mentioned in sub-paragraph (a) of the said paragraph 3; and

(b) deducting from the said sum the total amount of any reductions which have been or fall to be made under this Schedule in respect of payments previously made under the scheme in respect of the trade.

6.—(1) For the purposes of this Schedule, damage shall be deemed to be

damage in respect of which relief may be given under the Income Tax Acts if and only if—

(a) the damage is attributable to any of the following events, that is to say, the demolition, destruction or putting out of use of any asset, or the disposition or termination of an interest in any asset, and, by reason of that event, an allowance falls to be made under Part I or Part II of the Income Tax Act, 1945, in charging the profits or gains of the trade; or

(b) the damage consists of any loss, liability, expense or other burden in respect of which an allowance may be made in computing the profits or gains of the trade for the purposes of the Income Tax Acts:

Provided that where an allowance under Part I of the Income Tax Act, 1945, in respect of any damage falls to be reduced by the fraction specified in subsection (4) of section three of that Act, the same fraction, and the same fraction only, of the amount of the damage shall be treated as being referable to damage in respect of which relief may be given under the Income Tax Acts.

(2) Where any event occurs which would give rise to an allowance under the Income Tax Acts in respect of any asset in charging or computing the profits or gains of a trade but for any of the following matters, that is to say—

(a) that there are no profits or gains against which the allowance could be made; or

(b) that account is required to be taken of allowances previously made or deemed to have been made in respect of the asset, or

(c) that account is required to be taken of any sum which falls to be written off the expenditure incurred on the asset for the purpose of determining whether any and if so what allowance may be given by reason of the event, or

(d) that account is required to be taken of any sum falling to be taken into account as sale, insurance, salvage or compensation moneys,

the like consequences shall ensue under this Schedule as if an allowance had fallen to be made by reason of that event.

(3) Where any damage is attributable to a permanent change in the purposes for which an asset is used, or the temporary or permanent putting out of use of an asset, the question whether the damage is damage in respect of which relief may be given under the Income Tax Acts shall be determined as if the damage had been attributable to a sale of the asset on the date upon which the change or putting out of use took place

PART III.—EXCLUSION OF RELIEF IN RESPECT OF CONTRIBUTIONS PAID AFTER RELIEF HAS BEEN GIVEN UNDER PART II OF THIS SCHEDULE

7 The provisions of this Part of this Schedule shall have effect where—

(a) a contribution is paid under a scheme in respect of a trade; and

(b) before the contribution is paid, payments have been made under the scheme to the person carrying on the trade; and

(c) reductions have been made, under the preceding provisions of this Schedule, in the amounts which, by reason of those payments, are to be treated as trading receipts of the trade

8. There shall be ascertained—

(a) the total amount of the said reductions; and

(b) the sum by which that total would have been decreased if the contribution, and any previous contributions to which this Part of this Schedule applies, had been paid before any of the payments were made.

9. For the purpose of determining what deduction is to be made in respect of the contribution under section twenty-five of the Finance Act, 1935, the contribution shall be deemed to be reduced by the sum specified in sub-paragraph (b) of the last preceding paragraph, but

(a) for the purpose of the application of that paragraph in relation to contributions subsequently paid under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum; and

(b) for the purpose of the application of paragraph 5 of this Schedule in relation to payments subsequently made under the scheme in respect of the trade, the total amount of the reductions referred to in the said paragraph 5 shall be treated as decreased by the said sum.

10. When two or more contributions are paid at the same time, the provisions of this Part of this Schedule shall have effect as if they were a single contribution

SIXTH SCHEDULE

(Sections 49 and 50)

POST-WAR REFUNDS IN THE CASE OF PARTNERSHIPS, GROUPS OF COMPANIES, ETC.

PART I.—PARTNERSHIPS

1. Where the original trade or business was carried on in the relevant chargeable accounting periods by persons in partnership, the following provisions shall have effect—

(a) the relevant chargeable accounting periods to which the refund is referable shall first be ascertained;

(b) the amounts of refund referable to each of those periods shall then be ascertained;

(c) each of those amounts shall then be apportioned among the partners by reference to their respective shares in the profits of the trade or business for the period in question;

(d) instead of one refund being made, a separate refund shall be made in the case of each partner equal to the total of the amounts apportioned under the last preceding sub-paragraph to that partner,

(e) any reference in the provisions of Part IV of this Act relating to income tax on the amount of refund referable to any of the relevant chargeable accounting periods shall be construed, in relation to each of the separate refunds, as a reference to the amount apportioned under sub-paragraph (c) of this paragraph to the partner in question in the case of that period.

Provided that where, in the case of a payment of, or on account of, a post-war refund, all the partners who were carrying on the original trade or business in the relevant chargeable accounting periods are still engaged in carrying it on when the payment falls to be made and are still then carrying it on alone and not in partnership with any other person, one joint payment may be made for all the partners, but the provisions of Part IV of this Act relating to income tax shall nevertheless have effect as though separate payments had been made as aforesaid in the case of each partner.

PART II.—GROUPS OF COMPANIES

2. For the purposes of this Part of this Schedule, a group of companies shall be deemed to be the same group notwithstanding any changes in the

members thereof so long as, and only so long as, the same body corporate remains the principal company of the group; and references in this Part of this Schedule, in relation to a member of a group of companies, to relevant chargeable accounting periods shall be construed as not including references to any chargeable accounting period during which it was not a member of the group.

3. All sums paid or payable by way of excess profits tax or the national defence contribution for any relevant chargeable accounting period in respect of any trade or business carried on by any member of a group of companies shall, for the purpose of ascertaining whether any, and if so what, post-war refund is due to any person, be deemed to have been paid or to be payable by the principal company of the group and not by any other member thereof; and for the purposes of Part IV of this Act, the trade or business of the principal company shall be deemed to be the original trade or business.

4. Where any sum is paid to the principal company for, or an account of, a post-war refund, the undertakings and authorities required by Part IV of this Act in relation to the payment shall not require the approval of the advisory panel by reason of the fact that the trade or business specified in those undertakings and authorities is not the original trade or business if the trade or business so specified is being or is to be carried on by a subsidiary member of the group

5. Where it is finally determined that any post-war refund is payable in respect of all or any of the trades or businesses carried on by members of a group of companies during any relevant chargeable accounting period, there shall be ascertained, in the case of each subsidiary member of the group—

(a) the total amount of excess profits tax and the national defence contribution for the relevant chargeable accounting periods which has been borne directly or indirectly by the subsidiary member;

(b) the total amount of the national defence contribution paid for the relevant chargeable accounting periods in respect of the trade or business of the subsidiary member.

(c) the total sum which could, under sub-paragraph (2) of paragraph 8 of Part IV of the Fifth Schedule to the Finance Act, 1940, have been required to be paid on account of excess profits tax for the relevant chargeable accounting periods by the subsidiary member on the assumption that excess profits tax had been chargeable for all those periods at eighty per cent., less the amount which would, on that assumption, have been payable to the subsidiary member under sub-paragraph (3) of the said paragraph 8,

and, if the amount mentioned in sub-paragraph (a) of this paragraph exceeds the sum of the amounts mentioned in sub-paragraphs (b) and (c) thereof an amount equal to the difference shall be paid by the principal company to the subsidiary member.

Provided that

(i) If the total of the amounts so payable by the principal company to the subsidiary members of the group of companies exceeds the total amount paid in respect of the post-war refund, the sums so payable shall be proportionately reduced so as together to amount to the said total amount so paid; and

(ii) on the payment of any sum payable by the principal company to a subsidiary member under this paragraph, the principal company shall be entitled to deduct and retain out of the payment tax at the standard rate for the year 1946-47 as if that payment were an annual payment to which Rule 19 of the General Rules applied paid in that year out of profits and gains brought into charge to tax.

6. Where an amount is paid to a subsidiary member under the last preceding paragraph, so much of the provisions of Part IV of this Act relating to income tax as confers a right of election that a post-war refund shall be charged to income tax for the year 1947-48 shall have effect as if the said payment were a payment of refund to the subsidiary member which was to be used for the purposes of its trade or business, as if the tax deducted therefrom under Rule 19 of the General Rules as applied by the last preceding paragraph had been deducted therefrom under the provisions of Part IV of this Act relating to the deduction of tax from payments of refund, and as if the gross amount of the refund paid to the principal company were diminished by the gross amount of the said payment.

7. So much of the provisions of Part IV of this Act relating to income tax on sums paid as or on account of post-war refunds as provides that the right to elect that sums so paid shall be chargeable as profits and gains of a trade for the year 1947-48 in lieu of being chargeable to tax for the year 1946-47 shall be restricted to cases where the person to whom the sum is paid is carrying on the trade during the whole or some part of the year 1947-48 shall not apply where, during the whole or part of the year 1947-48, the trade is being carried on by a subsidiary member of a group of companies of which the person to whom the sum was paid is then the principal company.

PART III.—TAX PAID UNDER FINANCE ACT, 1943, S. 24

8. Where, under section twenty-four of the Finance Act, 1943, a joint and several liability is imposed on any persons, the rights of those persons respectively to a post-war refund shall be based on the amounts of tax ultimately borne by them respectively by reason of the imposition of the liability and not on the amounts of tax paid by them respectively to the Crown, and no sum shall be paid as or on account of a post-war refund in the case of any of those persons unless the Commissioners are satisfied as to the amounts so borne by all those persons and are further satisfied that any liability of any of those persons to make a payment to any other of those persons which arises by virtue of subsection (3) of the said section twenty-four has been extinguished.

9. Any reference in Part IV of this Act to the original trade or business shall, in relation to any post-war refund made in respect of tax paid under the said section twenty-four, be construed as a reference to the trade or business carried on by the company whose stock in trade was disposed of at the time of the disposal thereof, and any reference in section thirty-nine of this Act to the person who carried on the original trade or business shall, in relation to any post-war refund in respect of tax paid under the said section twenty-four, be deemed to include a reference to the person who bore that tax.

SEVENTH SCHEDULE

(Section 51)

PROVISIONS AS TO RELIEF FROM INCOME TAX . . BY WAY OF CREDIT IN RESPECT OF FOREIGN TAX.

Interpretation

1.—(1) In this Schedule except where the context otherwise requires—

"the United Kingdom taxes" means income tax and excess profits tax; . .

"foreign income tax" means, in relation to any territory arrangements with the Government of which have effect by virtue of Part V of this Act, any tax chargeable under the laws of that territory which

corresponds to income tax, being a tax for which credit may be given under the arrangements;

. . . . . .

(2) Where arrangements having effect by virtue of Part V of this Act provide for any tax chargeable under the laws of the territory concerned being treated as income tax . . . that tax shall, notwithstanding anything in the preceding provisions of this paragraph, be treated as foreign income tax or foreign excess profits tax, as the case may be.

(3) Any reference in this Schedule to foreign income tax or foreign excess profits tax shall be construed, in relation to credit to be given under any arrangements, as a reference only to the tax chargeable under the laws of the territory with the Government of which the arrangements were made..

General

2. Subject to the provisions of this Schedule, where, under the arrangements, credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income or profits, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit:

Provided that foreign income tax shall be allowed as a credit only against income tax and foreign excess profits tax shall be allowed as a credit only against excess profits tax.

Requirement as to residence

3. Credit shall not be allowed against income tax for any year of assessment . . . unless the person in respect of whose income or profits the tax is chargeable is resident in the United Kingdom for that year or period:

Provided that, except in so far as it relates to income tax. . . this paragraph shall not apply to tax in respect of the profits of a body corporate which is a subsidiary member of a group of companies for the purposes of the Fifth Schedule to the Finance Act, 1940.

Limits on total credit – income tax

4.—(1) The amount of the credit to be allowed for foreign income tax in respect of any income shall not exceed the sum which would be produced by computing the amount of that income in accordance with the Income Tax Acts, and then charging it to income tax for the year of assessment for which the credit is to be allowed, but at the following rate, that is to say—

(a) in the case of a person whose income is chargeable to income tax at the standard rate only, a rate ascertained by dividing the income tax payable by him for the year by the amount of his total income for the year;

(b) in the case of a person part of whose total income is chargeable to income tax at a rate or rates in excess of the standard rate, the sum of the following rates—

(i) the rate which would have been the appropriate rate in his case if his income had been chargeable at the standard rate only; and

(ii) the rate ascertained by dividing the surtax payable by him for the year by the amount of his total income for the year:

Provided that where, under the arrangements, credit is not to be allowed against surtax for the year, the rate shall be calculated in all cases as in the case of persons whose incomes are chargeable to income tax at the standard rate only, and where, under the arrangements, credit is not to be allowed except against surtax for the year, the rate shall be that ascertained by dividing the surtax payable by the person in question for the year by the amount of his total income for the year.

(2) For the purpose of determining the said rate, the tax payable by any person for any year shall be computed without regard to any relief in respect of life assurance premiums and without any reduction thereof for any credit allowed or to be allowed under any arrangements having effect by virtue of Part V of this Act, but shall be deemed to be reduced by any tax which, otherwise than under Rule 20 of the General Rules, he is entitled to charge against any other person, and the total income of any person shall be deemed to be reduced by the amount of any income the income tax upon which he is entitled to charge as aforesaid.

5. Without prejudice to the provisions of the last preceding paragraph, the total credit to be allowed to a person for any year of assessment for foreign income tax under all arrangements having effect by virtue of Part V of this Act shall not exceed the total income tax payable by him for that year of assessment, less any tax which, otherwise than under Rule 20 of the General Rules, he is entitled to charge against any other person

Effect on computation of income of allowance of credit

7.—(1) Where credit falls to be given against income tax on any income for foreign income tax, the following provisions of this paragraph shall have effect as respects the computation, for the purposes of the United Kingdom taxes, of the amount of that income.

(2) Where the income tax payable depends on the amount received in the United Kingdom, the said amount shall be deemed to be increased by the amount of the credit

(3) Where the last preceding sub-paragraph does not apply—

(a) no deduction shall be made in respect of foreign income tax (whether in respect of the same or any other income); and

(b) where the income includes a dividend and under the arrangements foreign income tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign income tax not so chargeable which falls to be taken into account in computing the amount of the credit; but

(c) notwithstanding anything in the preceding provisions of this sub-paragraph, where the amount of the credit is reduced by the operation of paragraph 4 of this Schedule, the amount of the income shall be reduced by the same amount.

(4) In relation to the computation of the total income of a person for the purpose of determining the rate mentioned in paragraph 4 of this Schedule, the preceding provisions of this paragraph shall have effect subject to the following modifications—

(a) for the reference in sub-paragraph (2) to the amount of the credit there shall be substituted a reference to the amount of the foreign income tax in respect of the income (in the case of a dividend, foreign income tax not chargeable directly or by deduction in respect of the dividend being left out of account); and

(b) paragraphs (b) and (c) of sub-paragraph (3) shall not apply,

and subject to those modifications, shall have effect in relation to all income in the case of which credit falls to be given for foreign income tax under any arrangements for the time being in force by virtue of Part V of this Act.

Special provisions as to dividends

9.—(1) Where, in the case of any dividend, foreign income tax not chargeable directly or by deduction in respect of the dividend is, under the arrangements, to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividend, the foreign income tax not so chargeable which is to be taken into account shall be that borne by the body corporate paying the dividend upon the relevant profits insofar as it is properly attributable to the proportion of the relevant profits which is represented by the dividend.

(2) The relevant profits are—

(a) If the dividend is paid for a specified period, the profits of that period;

(b) if the dividend is not paid for a specified period but is paid out of specified profits, those profits;

(c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable:

Provided that if, in a case falling under sub-paragraph (a) or sub-paragraph (c) of this paragraph, the total dividend exceeds the profits available for distribution of the period mentioned in the said sub-paragraph (a) or the said sub-paragraph (c), as the case may be, the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this paragraph) as is equal to the excess; and for the purposes of this proviso the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

10. Where—

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign income tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Miscellaneous

11. Credit shall not be allowed under the arrangements against the income tax . . chargeable in respect of the income or profits of any person for any year of assessment . . . if he elects that credit shall not be allowed in the case of his income or profits for that year or period.

12. Subject to the provisions of the next following paragraph, any claim for an allowance by way of credit shall be made to the surveyor not later than six years from the end of the year of assessment . . . and, if the surveyor objects to any such claim, it shall be heard and determined by the Special Commissioners as if it were an appeal to them against an assessment under Schedule *D*, and the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

13. Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Income Tax Acts . . . limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.

EIGHTH SCHEDULE
(Section 58)

AMENDMENTS AS TO EXCEPTIONAL DEPRECIATION ALLOWANCES

. . . . . .

PART II—PROVISIONS APPLICABLE TO INCOME TAX . . .

7. In this Part of this Schedule, the expression "exceptional depreciation allowance" means an allowance under section nineteen of the Finance Act, 1941 . . . and the expression "the principal provisions" means the provisions of section nineteen of the Finance Act, 1941, and any enactments amending that section . . .

8.—(1) This paragraph shall have effect in relation to the sale of buildings, machinery or plant where either—

(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or

(b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this Schedule, might have been expected to accrue to the parties or any of them was the obtaining of any allowance or deduction for any of the purposes of the Income Tax Acts or of the enactments relating to excess profits tax or the national defence contribution.

(2) Where the buildings, machinery or plant are sold at a price other than the relevant price (as defined for the purposes of this paragraph), the like consequences shall ensue for the purposes of the principal provisions, in their application to all persons concerned, as would have ensued if the buildings, machinery or plant had been sold at the relevant price.

(3) In this paragraph the expression "the relevant price" means, in relation to any sale of buildings, machinery or plant, a price equal to—

(a) the price which they would have fetched if sold in the open market; or

(b) the net cost of the buildings, machinery or plant to the seller,

whichever is the less.

For the purposes of this sub-paragraph, the said net cost shall be treated as reduced by the aggregate amount of any deductions for wear and tear or depreciation, other than exceptional depreciation allowances, allowed to the seller in respect of the buildings, machinery or plant for the purposes of income tax, excess profits tax or the national defence contribution, as the case may be:

Provided that the reference in this sub-paragraph to deductions for wear and tear or depreciation shall, in relation to income tax, be deemed to include

a reference to any allowance made under Part I or Part II of the Income Tax Act, 1945 . . .

9. Any reference in the provisions of this Schedule or in the principal provisions to the sale of any property includes a reference to the exchange of any property, and, in the case of a leasehold interest, to the surrender thereof for valuable consideration, and all the said provisions shall be construed accordingly with the necessary adaptations, and, in particular, with the adaptation that references to the net proceeds of the sale and to the price shall be construed as including references to the amount of the consideration for the exchange or surrender.

10.—(1) Any reference in the provisions of this Schedule or of the principal provisions to the sale of any buildings, plant or machinery includes a reference to the sale thereof together with any other property, and, where the buildings, plant or machinery are sold together with other property, so much of the price of the whole of the property sold as, on a just apportionment, is properly attributable to the buildings, plant or machinery in question, shall be deemed to be the price of the buildings, plant or machinery for the purposes of those provisions, and references to the cost of the provision of buildings, plant or machinery shall be construed accordingly.

For the purposes of this sub-paragraph, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

(2) Where it is material, for the purposes of the principal provisions, to take account of any payment made or to be made in respect of buildings, plant or machinery under the War Damage Act, 1943, and any payment made or to be made under that Act is properly attributable partly to the buildings, plant or machinery in question and partly to other property, so much only of the payment as is properly attributable to the buildings, plant or machinery in question shall be taken into account for those purposes.

11. For the purposes of the principal provisions and the provisions of this Schedule, the sale of any buildings, plant or machinery shall be deemed to take place at the time of completion or the time when possession is given, whichever is the earlier.

12. References in this Schedule to a body of persons include references to a partnership.

13. In this Schedule, the expression "control", in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership.

14. In this Schedule, the expression "leasehold interest" includes the interest conferred by an agreement for a lease where the term to be covered by the lease has begun, and the interest conferred by any tenancy, but not the interest conferred by a mortgage:

Provided that, in the application of this Schedule to Scotland, the said expression means the interest of a tenant in property subject to a lease.

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