

ACT No. VII OF 1939.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 17th
February, 1939.)

An Act further to amend the Indian Income-tax Act, 1922.

XI of 1922. **W**HEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Income-tax (Amendment) Act, 1939. Short title and commencement.

(2) This section and Part I shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and Part II shall come into force on such subsequent date, not later than two years from the date appointed for the coming into force of Part I, as the Central Government may, in like manner, appoint:

Provided that sub-clauses (iii) and (iv) of clause (b) of section 11 shall not take effect earlier than the 1st day of April, 1940.

PART I.

XI of 1922. 2. In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act),— Amendment of section 2, Act XI of 1922.

(a) in clause (3), before the word "Assistant", in both places where it occurs, the word "Appellate" shall be inserted;

(b) after clause (6) the following clause shall be inserted, namely:—

"(6A) 'dividend' includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release

release by the company to its shareholders of all or any part of the assets of the company ;

- (b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;
- (c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included ; and

- (d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not :

Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

Explanation.—The words 'accumulated profits' wherever they occur in this clause, shall not include 'capital profit' ;

- (c) existing clause (6A) shall be re-numbered as clause (6B) and, in that clause, as so re-numbered, for the words and figures "the Indian Contract Act, 1872 ;" the words and figures "the Indian Partnership Act, 1932 : " shall be substituted.

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substituted, and the following words shall be added, namely :—

“provided that the expression ‘partner’ includes any person who being a minor has been admitted to the benefits of partnership;”;

(d) after clause (6B), as so re-numbered, the following clauses shall be inserted, namely :—

“(6C) ‘income’ includes anything included in ‘dividend’ as defined in clause (6A) and anything which under *Explanation 2* to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vi) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule ;

(6D) ‘Inspecting Assistant Commissioner’ means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5 ;” ;

(e) in clause (9), after the word “family” the words “and a local authority” shall be inserted ;

(f) in clause (11),—

(i) after the word “means” the following words shall be inserted, namely :—

“in respect of any separate source of income, profits and gains” ;

(ii) for the proviso to sub-clause (a) the following proviso shall be substituted, namely :—

“Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression ‘previous year’ as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit ; or” ;

(iii) after

(iii) after sub-clause (b) the following shall be added, namely :—

“ or

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date :

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year ; and

when the assessee is a partner in a firm, ‘ previous year ’ in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm ; ”; and

(g) in clause (15), for the words “ from all sources to which this Act applies ” the words, brackets and figures “ referred to in sub-section (1) of section 4 ” shall be substituted, for the word and figures “ section 16 ” the words “ this Act ” shall be substituted, and the following words shall be added, namely :—

“ ‘ total world income ’ includes all income, profits and gains wherever accruing or arising

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arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply; and".

3. In section 3 of the said Act, the words "applicable to the total income of an assessee" shall be omitted; for the words "all income, profits and gains" the words "the total income" shall be substituted, and for the words "company, firm and other association of individuals" the words "company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually" shall be substituted.

Amendment of section 3, Act XI of 1922.

4. In section 4 of the said Act,—

Amendment of section 4, Act XI of 1922.

(a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:—

"(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

(a) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person is resident in British India during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year; or

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the

the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts :

Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year :

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India.

Explanation 2.—Income which would be chargeable under the head 'Salaries' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India.

Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India.

(2) For

of the income of a private religious trust which does not enure for the benefit of the public”.

5. After section 4 of the said Act and in Chapter I the following sections shall be inserted, namely :—

Insertion of
new section
4A and 4B in
Act XI of
1922.
Residence in
British India.

“ 4A. For the purposes of this Act—

(a) any individual is resident in British India in any year if he—

(i) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more ; or

(ii) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year ; or

(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit ;

(b) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India ; and

(c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

4B. For the purposes of this Act—

(a) an individual is ‘ not ordinarily resident ’ in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not

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not during the seven years preceding that
year been in British India for a period of, or
for periods amounting in all to, more than
two years ;

- (b) a Hindu undivided family is deemed to be
ordinarily resident in British India if its
manager is ordinarily resident in British
India ;
- (c) a company, firm or other association of
persons is ordinarily resident in British
India if it is resident in British India. "

6. For section 5 of the said Act the following section shall be substituted, namely :—

Substitution
of new section
for section 5,
Act XI of
1922.

" 5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

- (a) the Central Board of Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax who
may be either Appellate Assistant Commis-
sioners of Income-tax or Inspecting Assistant
Commissioners of Income-tax,
- (d) Income-tax Officers.

(2) The Central Government may appoint a Com-
missioner of Income-tax for any area specified
in the order of appointment, and may appoint
Commissioners of Income-tax, not more than
three in all, each to discharge, without
reference to area, and to the exclusion of any
Commissioner appointed for any area, the
functions of a Commissioner in respect of any
cases or classes of cases assigned to him by the
Central Board of Revenue.

(3) The Central Government may appoint for any
area as many Appellate or Inspecting Assistant
Commissioners of Income-tax and Income-tax
Officers as it thinks fit.

(4) Appellate Assistant Commissioners of Income-
tax shall be under the direct control of the Cen-
tral Board of Revenue and shall perform their
functions in respect of such persons or classes

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of persons and of such incomes or classes of income and in respect of such areas as the Central Board of Revenue may direct, and, where two or more Appellate Assistant Commissioners have been appointed for the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

- (5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct, and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively.
- (6) The Central Board of Revenue may, by notification in the official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such
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classes of income and for such area as may be specified in the notification, and thereupon the functions so specified shall cease within the specified area to be performed in respect of the specified classes of persons or classes of income by the other authorities appointed under sub-sections (2) and (3).

- (7) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.
- (8) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

7. In section 6 of the said Act, for clauses (iii), (iv), (v) and (vi) the following clauses shall be substituted, Amendment of section 6, Act XI of 1922. namely :—

- "(iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources."

8. In sub-section (1) of section 7 of the said Act,— Amendment of section 7, Act XI of 1922.

- (a) the words "received by him" shall be omitted ;
- (b) for the words "which are paid by or on behalf of the Crown" the words "which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown" shall be substituted ;

(c) for

- (c) for the words "by or on behalf of any private employer" the following words shall be substituted, namely :—

"any private employer; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received :

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties :";

- (d) in the existing proviso after the word "Provided" the word "further" shall be inserted ;
(e) after the proviso the following further proviso shall be inserted, namely :—

"Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction.";

and

- (f) the existing *Explanation* shall be numbered *Explanation 1*, and after that *Explanation*, the following *Explanation* shall be added, namely :—

"*Explanation 2*.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :

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Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925, applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established."

9. In section 8 of the said Act, to the first proviso the following shall be added, namely :—

Amendment of
section 8, Act
XI of 1922.

" or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest "

10. In section 9 of the said Act,—

Amendment of
section 9, Act
XI of 1922.

(a) in sub-section (I),—

(i) for the words " under the head ' Property ' " the words " under the head ' Income from Property ' " shall be substituted, and for the words " his business " the words " any business, profession or vocation carried on by him the profits of which are assessable to tax " shall be substituted ;

(ii) for clause (iv) the following clause shall be substituted, namely :—

" (iv) where the property is subject to a mortgage or other capital charge, the amount

amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43;”;

(iii) for clause (vi) the following clause shall be substituted, namely:—

“(vi) in respect of vacancies, that part of the net annual value, after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied;”;

(iv) the proviso shall be omitted;

(b) after sub-section (2) the following sub-section shall be added, namely:—

“(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not

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not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.”

11. In section 10 of the said Act,—

(a) in sub-section (1), for the word “ Business ”, ^{Amendment of section 10, Act XI of 1922.} where it first occurs, the words “ Profits and gains of business, profession or vocation ” shall be substituted, and for the word “ business ”, in all other places where it occurs throughout the section, the words “ business, profession or vocation ” shall be substituted ;

(b) in sub-section (2),—

(i) in clause (i), for the words “ proportional part ” the words “ proportional annual value of the part ” shall be substituted ;

(ii) in clause (iii), the words “ where the payment of interest thereon is not in any way dependent on the earning of profits ” shall be omitted ; and to the clause the following proviso shall be added, namely :—

“ Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm ; ” ;

(iii) in clause (vi),—

(a) for the words “ original cost thereof to the assessee ” the words “ written down value thereof ” shall be substituted ;

(b) in
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(b) in clause (b) of the proviso, after the words "in any year" the words and figures "not being a year which ended prior to the 1st day of April, 1939," shall be inserted ;

(iv) for clause (vi) the following clause shall be substituted, namely :—

"(vi) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ; "

(v) clauses (vii), (viii) and (viii) shall be re-numbered, respectively, clause (viii), clause (ix) and clause (x), and in clause (c) of the proviso to the clause re-numbered clause (x), for the word "businesses" the words "businesses, professions or vocations" shall be substituted ;

(vi) after clause (x), as re-numbered by this Act, the following clause shall be inserted, namely :—

"(xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as
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the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year ; "

(vii) existing clause (ix) shall be re-numbered (xii), and in that clause, for the brackets and words " (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains " the brackets and words " (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation " shall be substituted and the proviso at the end of that clause shall be omitted ;

(c) for sub-section (3) the following sub-sections shall be substituted, namely :—

" (3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (ix) or clause (xii) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on

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the basis of any such profits or gains ; and nothing in clause (xii) of sub-section (2) shall be deemed to authorise—

- (a) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ; or
- (b) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm ; or
- (c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'.

(5) In sub-section (2), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section ; 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation ; and 'written down value' means—

- (a) in the case of assets acquired in the previous year, the actual cost to the assessee ;
- (b) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less all depreciation allowable to him under this section ;
- (c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since

since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date :

Provided that where the provisions of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in clauses (a), (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation :

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance.

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in section 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act."

12. Section 11 of the said Act shall be omitted.

Omission of section 11, Act XI of 1922.

13. In section 12 of the said Act,—

Amendment of section 12, Act XI of 1922.

(a) in sub-section (1), for the words "Other sources" the words "Income from other sources" shall be substituted, and for the words "and

from

Indian Income-tax (Amendment). [ACT VII

from every source to which this Act applies " the words " which may be included in his total income " shall be substituted ;

- (b) in sub-section (2), for the words " provided that no allowance shall be made on account of any personal expenses of the assessee " the following shall be substituted, namely :—

" provided that no allowance shall be made on account of—

(a) any personal expenses of the assessee, or

(b) any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(c) any payment which is chargeable under the head ' Salaries ', if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18.";

- (c) after sub-section (2) the following sub-section shall be added, namely :—

" (3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10."

14. After section 12 of the said Act the following section shall be inserted, namely :—

"12A. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party

Insertion of
new section
12A in Act
XI of 1922.
Managing
Agency
Commission.

party shall be chargeable only on the share to which such agent or party is entitled under the agreement."

15. In section 13 of the said Act, the figures " 11 " shall be omitted. Amendment of section 13, Act XI of 1922.

16. For sub-section (2) of section 14 of the said Act the following sub-section shall be substituted, namely:— Amendment of section 14, Act XI of 1922.

" (2) The tax shall not be payable by an assessee—

(a) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 16 on which the tax has already been paid by the firm ; or

(b) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association."

17. In section 15 of the said Act,—

(a) in sub-section (1), for the figures " 1897 " the figures " 1925 " shall be substituted, and for the words " by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife " the words " in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee " shall be substituted ;

(b) in sub-section (3), for the word " proviso " the words "second proviso" shall be substituted, and for the words "one-sixth of the total

income

income of the assessee" the following words shall be substituted, namely:—

"in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less".

Amendment of
section 16, Act
XI of 1922.

18. In section 16 of the said Act,—

(a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:—

(1) In computing the total income of an assessee—

(a) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15 shall be included;

(b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year:

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24;

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act,

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OF 1939.] *Indian Income-tax (Amendment).*

1939, from assets remaining the property of the settlor or disponer shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression 'settlor or disponer' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him and

Indian Income-tax (Amendment). [ACT VII

and shall be increased by the amount of income-tax (but not super-tax) payable thereon calculated at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed :

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.”;

- (b) in sub-clause (iv) of clause (a) of sub-section (3), after the words “by such individual” the words “otherwise than for adequate consideration” shall be inserted ;
- (c) in clause (b) of sub-section (3), for the words “association of individuals” the words “person or association of persons” shall be substituted, the words “consisting of such individual and his wife” shall be omitted, for the words “to the association” the words “otherwise than for adequate consideration to the person or association” shall be substituted, and to the clause the words “for the benefit of his wife or a minor child or both” shall be added.

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Substitution of new section for section 17, Act XI of 1922.
Determination of tax payable in certain special cases.

19. For section 17 of the said Act the following section shall be substituted, namely :—

“ 17. (1) Where a person is not resident in British India, and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, the tax, including super-tax,

super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

- (2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income."

20. In section 18 of the said Act,—

- (a) in sub-section (2), for the words "but not super-tax" the words "and super-tax" shall be substituted, and for the words "at the rate applicable to the estimated income of the assessee under this head" the words "at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head" shall be substituted;

- (b) after sub-section (2A) the following sub-section shall be inserted, namely:—

(2B) Any person responsible for paying any income chargeable under the head 'Salaries

Amendment of
section 18, Act
XI of 1922.

to a person not resident in British India shall at the time of payment deduct income tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head." ;

(c) in the proviso to sub-section (3), after the words "the total income" the words "or the total world income" shall be inserted and for the words "herein referred to" the words, brackets, figure and letter "referred to in this sub-section or in sub-section (2B), as the case may be," shall be substituted ;

(d) after sub-section (3) the following sub-section shall be inserted, namely :—

"(3A) Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate." ;

(e) existing sub-sections (3A), (3B), (3C) and (3D) shall be re-numbered, respectively, (3B), (3C), (3D) and (3E) ;

(f) in sub-section (3B), as re-numbered by this Act, for the words "total income", in both places where they occur, the words "total world income" shall be substituted ; after the words "Interest on Securities" the words "or any other sum chargeable under this Act" shall be inserted ; for the words "paying such interest" the words "making such payments" shall be substituted ; and the words "income-tax and" shall be omitted ;

(g) in sub-section (3C), as re-numbered by this Act, after the words "Interest on Securities" the words "or any other sum chargeable under this Act" shall be inserted ; for the words "pays to that person in any year an amount of such interest" the words "makes to that person

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person in any year payments" shall be substituted ; for the words " paying such interest " the words " making such payments " shall be substituted ; for the word, brackets, figure and letter " sub-section (3A) " the word, brackets, figure and letter " sub-section (3B) " shall be substituted ; the words " income-tax on the total amount of such interest at the rate appropriate to such total, and " shall be omitted ; and for the words " such total " the words " the total amount of such payments " shall be substituted ;

(h) in sub-section (3D), as re-numbered by this Act, for the words " total income " the words " total world income " shall be substituted ;

(i) in sub-section (3E), as re-numbered by this Act, for the word, brackets, figure and letter " sub-section (3C) " the word, brackets, figure and letter " sub-section (3D) " shall be substituted ;

(j) in sub-section (5), after the word " section " the words, brackets and figures " and any sum by which a dividend has been increased under sub-section (2) of section 16 " shall be inserted, after the word " security " the words " or of the shareholder " shall be inserted, and in the second proviso to the said sub-section,—

(i) for the words, figures and brackets " sub-section (3) of section 16 " the words, letters, figures and brackets " clause (c) of sub-section (1) or sub-section (3) of section 16, section 44D or section 44E " shall be substituted ; and

(ii) for the words " that person " the words " such other person " shall be substituted ;

(k) in sub-section (7), for the words " and pay " the words " or after deducting fails to pay " shall be substituted ; and for the word " he ", where it first occurs, the words, brackets, figures and letters " he, and in the

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Indian Income-tax (Amendment). [ACT VII

cases specified in sub-sections (3D) and (3E) the company of which he is the principal officer" shall be substituted, and for the word "he", where it occurs for the second time, the words "he or it" shall be substituted ;

- (i) in sub-section (9), for the words "at the time of payment of interest or dividends" the words "at the time of payment of the sum from which tax has been deducted" shall be substituted, and for the word, brackets, figure and letter "or (3D)" the word, brackets, figures and letters "(3D) or (3E)" shall be substituted.

Substitution of new section for section 19, Act XI of 1922.

21. For section 19 of the said Act the following section shall be substituted, namely :—

Payment in other cases.

- " 19. In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct."

Amendment of section 20A, Act XI of 1922.

22. In section 20A of the said Act, for the words "one thousand" the words "four hundred" shall be substituted.

Amendment of section 21, Act XI of 1922.

23. In section 21 of the said Act,—

- (a) after the words "in the prescribed form" the words "and verified in the prescribed manner" shall be inserted ;
- (b) in clause (a), after the word "received" the words "or to whom was due" shall be inserted ;
- (c) in clause (b), after the word "received" the words "or so due" shall be inserted, and after the word "paid" the words "or due, as the case may be" shall be added ;
- (d) in clause (c), after the word "income-tax" the words "and super-tax" shall be inserted.

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24. In section 22 of the said Act,—

Amendment of section 22, Act XI of 1922.

(a) for sub-section (1) the following sub-section shall be substituted, namely :—

" (1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons."

(b) in sub-section (2), the words "other than a company" shall be omitted, and for the words "shall serve" the words "may serve" shall be substituted, and after the words "his total income" the words "and total world income" shall be inserted; and to the said sub-section the following proviso shall be added; namely :—

"Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return."

(c) in sub-section (3), the words "and any return so made shall be deemed to be a return made in due time under this section" shall be omitted;

(d) in sub-section (4), the words "on the principal officer of any company or" shall be omitted; and after the words "on any person" the words "who has made a return under sub-section (1) or" shall be inserted; and

(e) after

(e) after sub-section (4) the following sub-section shall be added, namely:—

“(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.”

Amendment of
section 23, Act
XI of 1922.

25. In section 23 of the said Act,—

(a) in sub-section (1), after the word “satisfied” the words “without requiring the presence of the assessee or the production by him of any evidence” shall be inserted;

(b) in sub-section (2), for the words and figure “has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return” the words and figure “is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person” shall be substituted;

(c) in sub-section (4),—

(i) for the words beginning “If the principal officer” and ending “as the case may be” the words, brackets and figures “If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section” shall be substituted;

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(ii) after the word "judgment" the words "and determine the sum payable by the assessee on the basis of such assessment" shall be inserted;

(iii) for the words "in the case of a registered firm, may cancel its registration" the words "in the case of a firm, may refuse to register it or may cancel its registration if it is already registered" shall be substituted;

(d) after sub-section (4) the following sub-section shall be added, namely:—

"(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24:

Provided further that when any of such partners is a person not resident in British India, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm

itself

itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm."

Amendment of section 23A, Act XI of 1922.

26. In section 23A of the said Act,—

- (a) sub-section (1) shall be omitted;
- (b) sub-section (2) shall be re-numbered sub-section (1), and—
- (i) for the portion of the said sub-section preceding the proviso the following shall be substituted, namely:—

Power to assess individual members of certain companies.

"(1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent. of the assessable income of the company of that previous year, he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate

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proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income :

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words ' sixty per cent. of the assessable income ' the words ' one hundred per cent. of the assessable income ' were substituted :

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned : ” ;

(ii) for the proviso the following shall be substituted, namely :—

“ Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.” ;

(iii) in

- (iii) in the *Explanation*, the whole of clause (a), the brackets and letter " (b) " and the whole of clauses (c) and (d) shall be omitted ;
- (c) sub-section (3) shall be re-numbered as sub-section (2) and in the sub-section, as so re-numbered, before the words " Assistant Commissioner " the word " Inspecting " shall be inserted and the words " firm, association or " shall be omitted ;
- (d) sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (3) and (4), and in sub-section (3), as so re-numbered,—
 - (i) paragraph (i) shall be omitted ;
 - (ii) in paragraph (ii), for the word, brackets and figure " sub-section (2) " the word, brackets and figure " sub-section (1) " shall be substituted ; for the words " and may be recovered from such member " the words " if it cannot be recovered from such member " shall be substituted and the words following those words shall be omitted ;
 - (iii) in paragraph (iii), the words " , firm or other association " and the words " , firm or association " shall be omitted ;
- (e) after sub-section (4), as re-numbered by the foregoing clause, the following sub-section shall be added, namely :—
 - " (5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company. "

Amendment of
section 24, Act
XI of 1922.

27. In section 24 of the said Act,—

- (a) to sub-section (1) the following proviso shall be added, namely :—
 - " Provided that where the assessee is an un-registered firm which has not been assessed under

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OF 1939.] *Indian Income-tax (Amendment)*.

under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section.";

(b) for sub-section (2) the following sub-sections shall be substituted, namely:—

"(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively:

Provided that nothing herein contained shall entitle any assessee, being a registered firm,

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Indian Income-tax (Amendment). [ACT VI]

to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm :

Provided further that where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm :

Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section."

Amendment of
section 24A,
Act XI of
1922.

28. In section 24A of the said Act,—

(a) in sub-section (1), for the words beginning "for the period from the expiry of the last previous year" and ending "for the financial year in which such assessment is made" the following words shall be substituted, namely:—

"of the period from the expiry of the last previous year of which the income has been assessed"

Amendment). [ACT VI

and set off any loss sustained between the date of the assessment and the date of the departure of the assessee, being a partner in a firm which has not been dissolved, in accordance with the provisions of clause (b) of section 23 in the manner provided in the said Act, to have set off against his own income by the firm :

in the case of an unregistered firm, the loss sustained by the firm under clause (b) of section 23, during the period, shall also be carried forward to the next assessment year as if it were a change of assessment.

where a change has taken place in the ownership of a firm or in the nature of the business, and the assessee has not succeeded in obtaining a new assessment, nothing in this section shall entitle any person incurring the loss to set off against his income,

the loss sustained by the assessee, if it is established that the loss has taken place during the period, shall be set off under section 23, in the manner provided in the said Act, to the assessee by the Income-tax Officer at the rate at which the loss was assessed for the purposes of this section.

where the loss sustained by the assessee, being a partner in a firm, is beginning "for the last previous financial year in which the firm was dissolved," the following provisions shall apply, namely :—

the loss sustained by the assessee, being a partner in a firm, shall be set off against his income for the last previous financial year in which the firm was dissolved, as if it were a change of assessment.

OF 1939.] *Indian Income-tax (Amendment).*

assessed in his hands to the probable date of his departure from British India, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from British India. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made";

and in the proviso, for the words "or have been assessed at too low a rate" the words "or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but" shall be substituted;

(b) in sub-section (2), for the words "comprised in the period first referred to in" the words "comprised in the relevant period referred to in the first sentence of" shall be substituted.

20. In section 24B of the said Act,—

(a) for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to

Amendment of
section 24B,
Act XI of
1922.

assess

Indian Income-tax (Amendment). [ACT VII

assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.”;

- (b) in sub-section (3), the words, brackets and figure “of sub-section (2)” shall be omitted and after the words “and for this purpose may” the following words shall be inserted, namely:—

“, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived.”.

Amendment of
section 25,
Act XI of
1922.

30. In section 25 of the said Act,—

- (a) in sub-section (3), after the words “is discontinued” the words “then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable,” shall be inserted:

- (b) after sub-section (3) the following sub-sections shall be inserted, namely:—

“(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939, carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already

already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be." ; and

(c) existing sub-section (4) shall be re-numbered sub-section (6), and in that sub-section, so re-numbered, for the words, brackets and figures "sub-section (1) or sub-section (3)" the words, brackets and figures "sub-section (1), sub-section (3) or sub-section (4)" shall be substituted.

31. (a) In sub-section (1) of section 25A of the said Act, the words "that a separation of the members of the family has taken place and" shall be omitted ;

Amendment of section 25A, Act XI of 1922.

(b) in sub-section (2) of section 25A of the said Act, after the words "Where such an order has been passed" the words "or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation" shall be inserted, the words "separation or" shall be omitted, and, in the proviso, for the words "separated members and groups of members" the words "members and groups of members whose joint family property has been partitioned" shall be substituted.

32. In section 26 of the said Act,—

(a) in sub-section (1), for the words beginning "the assessments on the firm" and ending "proportionate to his interest in the firm" the words "the assessment shall be made on

Amendment of section 26, Act XI of 1922.

the firm as constituted" shall be substituted, and to the said sub-section the following provisos shall be added, namely:—

"Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same:

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.";

(b) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year:

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid."

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OF 1939.] *Indian Income-tax (Amendment).*

33. In section 27 of the said Act, the words "or, Amendment of section 27, Act XI of 1922.
in the case of a company, the principal officer thereof" shall be omitted.

34. In section 28 of the said Act,—

(a) for sub-section (1) the following sub-section shall be substituted, namely:—

Amendment of section 28, Act XI of 1922.

"(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income :

Provided

Provided that—

- (a) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 22 ;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;
- (c) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him. ” ;
- (b) in sub-section (2), for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted ; for the words “ in addition to the income-tax payable by him ” the words “ in addition to the income-tax and super-tax, if any, payable by him ” shall be substituted ; and for the words “ not exceeding the amount of income-tax ” the words “ not exceeding one and a half times the amount of income-tax and super-tax ” shall be substituted ;
- (c) in sub-section (5), for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted ;
- (d) after sub-section (5) the following sub-section shall be added, namely :—
 - “ (6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.”

35. For

in the return imposed on income is less than a hundred rupees; a notice under section 22;

to comply with a notice under section 22 if he has no liability imposed on him shall be a fine of not more than one hundred rupees; under this section, an income-tax assessor shall be deemed to be an assessable person for failure to comply with a notice under section 22 or sub-section (1) of section 34.

Assistant Commissioner of Income-tax; for the purpose of this section, the words "Income-tax" shall include a half per cent super-

Assistant Commissioner of Income-tax; section

impose without prejudice

35. For

35. For section 29 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 29, Act XI of 1922. Notice of demand.

"29. When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable."

36. In section 30 of the said Act,— (a) in sub-section (1),—

Amendment of section 30, Act XI of 1922.

(i) for the words and figures "or rate at which he is assessed under section 23 or section 27" the words and figures "of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27" shall be substituted;

(ii) after the words and figure "assessment under section 27, or", the word "objecting" shall be inserted, and the words "against him" shall be omitted;

(iii) after the word, letter and figure "section 25A" the words, figures and brackets "or sub-section (2) of section 26" shall be inserted, and after the words "made by an Income-tax Officer" the words, letters, figures and brackets "or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46" shall be inserted;

(iv) after the words "made by an Income-tax Officer" the following words, figures and letters shall be inserted, namely:—

"or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49 or 49F, or to the amount of the refund allowed by the

Income-tax

Indian Income-tax (Amendment). [ACT VII

Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 23A ” ;

(v) for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted ;

(vi) for the proviso the following provisos shall be substituted, namely :—

“ Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income :

Provided further that a shareholder in a company in respect of which an order under section 23A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income. ” ;

(b) in sub-section (2), after the word and figure “ section 27 ” the words, letters and figures “ or of the intimation of an order under sub-section (1) of section 23A or under section 48, 49 or 49F ” shall be inserted, and for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted.

37. In

OF 1939.] *Indian Income-tax (Amendment).*

37. In section 31 of the said Act,—

Amendment of
section 31, Act
XI of 1922.

(a) for the words "Assistant Commissioner", wherever they occur in the section, the words "Appellate Assistant Commissioner" shall be substituted;

(b) after sub-section (2) the following sub-section shall be inserted, namely:—

"(2A) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable."

(c) in sub-section (3),—

(i) in clause (a), after the word "assessment" the words "and, in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association," shall be inserted;

(ii) in clause (b), after the words "fresh assessment", where they occur for the second time, the words "and determine where necessary the amount of tax payable on the basis of such fresh assessment" shall be added;

(iii) for the words and figures "section 25 or section 28" the words, figures and letter "section 25, or sub-section (1) of section 23A or sub-section (2) of section 26 or section 48, 49 or 49F" shall be substituted;

(iv) after clause (d) and before the proviso the following shall be inserted, namely:—

"or, in the case of an order under sub-section (1) of section 25A,

(e) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or

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Indian Income-tax (Amendment). [ACT VII

to make an assessment in the manner laid down in sub-section (2) of section 25A, or, in the case of an order under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46,

(f) confirm or cancel such order or vary it so as either to enhance or reduce the penalty ;

or, in the case of an appeal against a computation of loss under section 24,

(g) confirm or vary such computation ;” ;

(v) in the proviso, after the word “ assessment ” the words “ or a penalty ” shall be inserted ;

(vi) after the proviso the following proviso shall be added, namely :—

“ Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.”

Amendment of section 32, Act XI of 1922.

38. In sub-section (1) of section 32 of the said Act, for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted, and for the words, brackets and figures “ enhancing his assessment under sub-section (3) of section 31 ” the words, brackets and figures “ under sub-section (3) of section 31 enhancing his assessment or a penalty imposed under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F ” shall be substituted.

Amendment of section 33, Act XI of 1922.

39. In sub-section (1) of section 33 of the said Act, for the words “ Assistant Commissioner ” the words “ Appellate Assistant Commissioner ” shall be substituted, and for the word, brackets and figure “ sub-section (4) ” the word, brackets and figure “ sub-section (5) ” shall be substituted.

Omission of section 33A, Act XI of 1922.

40. Section 33A of the said Act shall be omitted.

41. (1) Section

41. (1) Section 34 of the said Act shall be re-numbered as sub-section (1) of that section, and in the section, as so re-numbered,—

Amendment of section 34, Act XI of 1922.

- (a) for the words "for any reason" the words "in consequence of definite information which has come into his possession the Income-tax Officer discovers that" shall be substituted;
- (b) for the words "has escaped assessment in any year, or has been assessed at too low a rate" the words "have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act" shall be substituted;
- (c) for the words "at any time within one year" the following shall be substituted, namely:—
"in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years";
- (d) after the proviso the following proviso shall be added, namely:—

"Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted."

(2) To the said section, as so re-numbered, the following sub-section shall be added, namely:—

"(2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry,

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Indian Income-tax (Amendment). [ACT VII

expiry, in any case to which clause (c) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable."

Amendment of section 35, Act XI of 1922.

42. In sub-section (1) of section 35 of the said Act,—

- (a) for the words "Assistant Commissioner", in both places where they occur, the words "Appellate Assistant Commissioner" shall be substituted;
- (b) for the words "within one year", in both places where they occur, the words "within four years" shall be substituted;
- (c) for the words "demand made upon an assessee" the words "assessment order passed by him" shall be substituted;
- (d) for the words "brought to his notice by the assessee" the words "brought to his notice by an assessee" shall be substituted;
- (e) after the proviso the following proviso shall be added, namely:—

"Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939."

Amendment of section 37, Act XI of 1922.

43. In section 37 of the said Act, for the words "Assistant Commissioner", in both places where they occur, the words "Appellate Assistant Commissioner" shall be substituted.

Amendment of section 38, Act XI of 1922.

44. For clause (3) of section 38 of the said Act the following clause shall be substituted, namely:—

- "(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than four hundred rupees, together with particulars of all such payments made."

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45. In section 40 of the said Act, for the words "being in receipt on behalf of such beneficiary of any income" the words "being entitled to receive on behalf of such beneficiary any income" shall be substituted and to the said section the following proviso shall be added, namely :

Amendment of section 40, Act XI of 1922.

" Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct."

46. (1) Section 41 of the said Act shall be re-numbered sub-section (1) of that section, and in the section, so re-numbered,—

Amendment of section 41, Act XI of 1922.

(a) the words "are received by" shall be omitted ;

(b) after the words "the Official Trustees or" the word "by" shall be omitted ;

(c) after the words "appointed by or under any order of a Court" the words "or any trustee or trustees appointed under a duly executed trust deed (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), are entitled to receive on behalf of any person" shall be inserted ;

(d) after the words "receiver or manager", where they occur for the second time, the words "or trustee or trustees" shall be inserted ;

(e) for the words "any person on whose behalf such income, profits or gains are received" the words "the person on whose behalf such income, profits or gains are receivable" shall be substituted ;

(f) the following provisos shall be added, namely :—

" Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate :

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Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part."

(2) To sub-section (1) of section 41, as so re-numbered, the following sub-section shall be added, namely:—

"(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains."

Amendment of
Section 42, Act
X I of 1922.

47. In section 42 of the said Act,—

(i) in sub-section (1),—

(i) for the words "In the case of any person residing out of British India, all profits or gains accruing or arising to such person," the words "All income, profits or gains accruing or arising," shall be substituted;

(ii) for the words "or property in British India" the following words shall be substituted, namely:—

"in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind";

(iii) for the words "shall be chargeable to income-tax in the name of the agent of any such person, and" the words "where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case" shall be substituted;

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(iv) in the proviso, for the words "Provided that" the following shall be substituted namely :—

"Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that";

(v) after the proviso the following provisos shall be added, namely :—

"Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person."

(b) in sub-section (2), after the words "Where a person not resident" the words "or not ordinarily resident" shall be inserted; the words ", and not being a British subject or a firm or company constituted within His Majesty's Dominions or a branch thereof" shall be omitted; the words "or the Assistant Commissioner, as the case may be," shall be omitted; and for the words commencing "between the resident and the non-resident"

non-resident" and ending "connection with the non-resident" the words "between such persons, the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident" shall be substituted;

(c) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India."

Amendment of section 43, Act XI of 1922.

48. In section 43 of the said Act,—

(a) before the proviso the following proviso shall be inserted, namely:—

"Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal, such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions:";

(b) in the existing proviso after the word "Provided" the word "further" shall be inserted.

Substitution of new section for sect. on 44, Act XI of 1922.

Liability in case of a discontinued firm or association.

49. For section 44 of the said Act the following section shall be substituted, namely:—

"44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such

of 1939.] *Indian Income-tax (Amendment).*

such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

50. In section 44C of the said Act, for the words "in any year" the words "in the year" shall be substituted.

Amendment of section 44C, Act XI of 1922.

51. After Chapter VA of the said Act the following Chapter shall be inserted, namely:—

Insertion of new Chapter VB in Act XI of 1922.

"CHAPTER VB.

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX.

44D. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, 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 such first mentioned person for all the purposes of this Act.

Avoidance of Income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions

of

of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) 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.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in British India, 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 enure for the benefit of the first mentioned person, or

(b) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or

(c) such first mentioned person 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

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(d) such first mentioned person 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

(e) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(6) In determining whether a person 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 such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(a) the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights;

(b) the expression 'benefit' includes a payment of any kind;

(c) references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of section 23A, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(d) references to assets representing any assets, income or accumulations of income include

references

Indian Income-tax (Amendment). [ACT VIII

references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred ;

- (e) any body corporate incorporated outside British India shall be treated as if it were resident out of British India whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

Avoidance of
tax by certain
transactions in
securities.

44E. (1) Where the owner of any securities (in this sub-section and in sub-section (2) 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 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 this Act to be the income of the owner and not to be the income of any other person.

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however,

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 business 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 this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) 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) 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.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes.

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 five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

Avoidance of
tax by sales
cum dividend.

44F. (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities 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 securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or 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) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income 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 income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income
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from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued :

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer 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 the person's total income for the purposes of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression 'securities' includes stocks and shares."

52. In section 45 of the said Act, for the words, Amendment of section 45, Act XI of 1922 brackets and figure "under sub-section (4)" the words, brackets and figure "under sub-section (3)" shall be substituted, and the words, figures and letter "or under section 33A" shall be omitted and to the section the following shall be added, namely :—

" provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not

treat

treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.”

Amendment of section 46, Act XI of 1922.

53. In sub-section (7) of section 46 of the said Act, after the word and figure “section 42” the words and figure “or of the proviso to section 45” shall be inserted, and for the words “the year” the words “the financial year” shall be substituted.

Amendment of section 47, Act XI of 1922.

54. In section 47 of the said Act, after the word and figure “section 28”, the words, letters, figures and brackets “sub-section (6) of section 44E, sub-section (5) of section 44F” shall be inserted.

Substitution of new section for section 48, Act XI of 1922.

55. For section 48 of the said Act the following section shall be substituted, namely :—

Refunds. /

“ 48. (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers

or

or powers of revision if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

- (3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.
- (4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or, where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act."

56. Section 48A of the said Act shall be omitted.

Omission of section 48A, Act XI of 1922.

57. In section 49 of the said Act,—

Amendment of section 49, Act XI of 1922.

(a) in sub-section (1),—

(i) after the word "paid", where it occurs for the first time, the words and figures "by deduction under section 18 or otherwise" shall be inserted; after the word "paid", where it occurs for the second time, the words "by deduction or otherwise" shall be inserted, and for the words "for that year" the words "for the corresponding year" shall be substituted;

(ii) the following proviso shall be added, namely :—

"Provided that in no case shall the rate at which such refund is calculated exceed half

Indian Income-tax (Amendment). [ACT VII

the Indian rate of tax appropriate to the income of the person entitled to relief.”;

(b) in sub-section (2), for clause (b) the following clause shall be substituted, namely :—

“(b) the expression ‘Indian rate of tax’ means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income ;”.

Insertion of new sections 49A, 49B and 49C in Act XI of 1922.

Relief in respect of Indian State and Dominion Income-tax.

58. After section 49 of the said Act the following sections shall be inserted, namely :—

“49A. (1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.

(2) For the purposes of this section ‘Dominion income-tax’ means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty’s Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

Payment of income-tax by company to be deemed payment by shareholder.

49B. Where a shareholder has received a dividend from a company which has paid income-tax imposed in British India or elsewhere, he shall

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be deemed, in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income-tax bears to the whole income of the company.

49C. (1) Where a shareholder has received a dividend from a company which has obtained the relief referred to in section 49 or granted under section 49A or under the India and Burma (Income-tax Relief) Order, 1936, he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted, in respect of income-tax only, to the company for the financial year preceeding the year in which the dividend was paid.

Relief granted to a company to be deemed relief granted to shareholder.

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48.

49D. If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.”

Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.

Amendment of
Section 49A,
Act XI of
1922.

59. Section 49A of the said Act shall be re-numbered 49E, and in that section so re-numbered, for the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted.

Amendment of
Section 49B,
Act XI of 1922.

60. Section 49B of the said Act shall be re-numbered 49F, and in that section so re-numbered, the word, figures and letter "or 48A" shall be omitted.

Amendment of
Section 50,
Act XI of
1922.

61. In section 50 of the said Act,—

- (a) after the word "income-tax" the words "or super-tax" shall be inserted;
- (b) for the words beginning "one year from the last day" and ending "whichever period may expire later" the following shall be substituted, namely:—

"four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India :

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later:—

- (c) in the existing proviso, after the word "Provided" the word "further" shall be inserted; after the word and figures "section 49" the words, brackets and figures "of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939" shall be inserted.

62. Section

3). [ACT VII

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62. Section 50A of the said Act shall be omitted.

Omission of
section 50A,
Act XI of
1922.

63. In clause (c) of section 51 of the said Act, before the word and figures "section 22" the words, brackets and figure "sub-section (2) of" shall be inserted.

Amendment of
section 51, Act
XI of 1922.

64. In section 52 of the said Act,—

Amendment of
section 52, Act
XI of 1922.

(a) after the words, figures and letter "or section 20A" the words and figures "or section 21" shall be inserted, and the words, brackets, figures and letters "or sub-section (2) of section 33A or sub-section (3) of section 50A" shall be omitted;

(b) for the words "be deemed to have committed the offence described in section 177 of the Indian Penal Code" the words "be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both" shall be substituted.

65. In section 53 of the said Act,—

Amendment of
section 53, Act
XI of 1922.

(a) in sub-section (1), for the words "Assistant Commissioner" the words "Inspecting Assistant Commissioner" shall be substituted;

(b) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence."

66. In section 54 of the said Act,—

Amendment of
section 54,
Act XI of 1922.

(a) in the first proviso to sub-section (2) the words "Provided that" shall be omitted and the proviso shall be numbered as sub-section (3);

(b) in sub-section (3) so re-numbered,—

(i) after clause (c) the following clauses shall be inserted, namely:—

"(d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(e) of

- (e) of any such particulars to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or
- (f) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or
- (g) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or ^{XXXVII of 1850.} to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or ” ;
- (ii) existing clause (cc) shall be re-lettered clause (h) and for existing clause (d) the following clauses shall be substituted, namely :—
 - “ (i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty’s Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or
 - (j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or
 - (k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, ^{VIII of 1878.} or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

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(l) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(m) so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established.”;

(c) in the second and third provisos to sub-section (2) the words “Provided further that” shall be omitted and these provisos shall be numbered, respectively, as sub-section (4) and sub-section (5);

(d) in sub-section (4) so re-numbered, after the words “proceeding under” the words, letter and figure “section 25A or” shall be inserted.

67. In section 55 of the said Act,—

Amendment of section 55, Act XI of 1922.

(a) for the words “company, unregistered firm or other association of individuals” the words “company, local authority, unregistered firm or other association of persons” shall be substituted, and after the words “not being a registered firm”, the words “or the partners of the firm or members of the association individually,” shall be inserted;

(b) before the existing proviso the following proviso shall be inserted, namely:—

“Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself;”;

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- (i) after the word "Provided" the word "further" shall be inserted;
- (ii) after the words "unregistered firm" the words "or other association of persons not being a company" shall be inserted;
- (iii) for the words "an individual having a share in the firm" the words "a partner of the firm or a member of the association, as the case may be," shall be substituted.

Amendment of section 56, Act XI of 1922

68. In section 56 of the said Act, after the word "company" the words "local authority" shall be inserted, and for the words "association of individuals" the words "association of persons" shall be substituted.

Omission of section 57, Act XI of 1922.

69. Section 57 of the said Act shall be omitted.

Amendment of section 58, Act XI of 1922.

70. In section 58 of the said Act,—

- (a) in sub-section (1), for the words "the proviso" the words "the second proviso" shall be substituted, and the figures "17", "21" and "48" shall be omitted and for the words, brackets and figures "sub-sections (2) and (3)" the word, brackets and figure "sub-section (2)" shall be substituted, and for the figures "20", the words, figures and brackets "and 20 and the first proviso to sub-section (1) of section 41 and section" shall be substituted;
- (b) in sub-section (2), for the words, brackets, figures and letters "sub-sections (3A), (3B), (3C) and (3D)" the words, brackets, figures and letters "sub-sections (2), (2A), (2B), (3B), (3C), (3D) and (3E)" shall be substituted and the word and figures "section 57" shall be omitted.

Amendment of section 58A, Act XI of 1922.

71. In clause (b) of section 58A of the said Act,—

- (a) in sub-clause (i) the words "individuals or" shall be omitted;
- (b) in sub-clause (ii) the words and figures "or section 11" shall be omitted.

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72. In section 58B of the said Act, sub-section (2) shall be omitted, and sub-sections (3), (4) and (5) shall be re-numbered (2), (3) and (4), respectively, and in sub-section (4) as so re-numbered after the word "recognise" the words "or an order withdrawing recognition from" shall be inserted.

Amendment of section 58B, Act XI of 1922.

73. In section 58F of the said Act,—

Amendment of section 58F, Act XI of 1922.

(a) to sub-section (1) the words "or six thousand rupees, whichever is less" shall be added;

(b) in sub-section (2), for the words beginning "In the accounts of a recognised provident fund" and ending "Such interest shall be exempt from payment of income-tax," the following shall be substituted, namely:—

"Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and"

74. In sub-section (3) of section 58G of the said Act, for the words beginning "from the payment of which" and ending "in addition to any other income-tax" the following shall be substituted, namely:—

Amendment of section 58G, Act XI of 1922.

"and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax"

75. In sub-section (2) of section 58K of the said Act,—

Amendment of section 58K, Act XI of 1922.

(a) after the word "shall" the following words shall be inserted, namely:—

" , if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, ";

(b) for

- (b) for the word, brackets and figures " clause (ix) " the word, brackets and figures " clause (xii) " shall be substituted.

Insertion of new Chapter in Act XI of 1922. 76. After Chapter IXA of the said Act the following Chapter shall be inserted, namely :—

" CHAPTER IXB.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

Definitions. 58N. In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) ' approved superannuation fund ' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter ;
- (b) ' employer ', ' employee ' and ' contribution ' have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds ;
- (c) ' ordinary annual contribution ' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

Approval and withdrawal of approval. 58O. (1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The

Application for approval.

58Q. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Exemption of superannuation fund from income-tax.

58R. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply :

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue 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 Central Board of Revenue thinks proper.

Treatment of repaid contributions.

58S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount

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amount so repaid shall be deemed for the purposes of income-tax and super-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall, except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

58T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

Deduction from pay of, and contributions on behalf of, employee to be included in return under section 21.

58U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

Liabilities of trustees on cessation of approval of fund.

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation 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 the fund ceased to be an approved fund under the provisions of this Chapter.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

Particulars to be furnished in respect of superannuation funds.

(a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require ;

(b) prepare

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- (b) prepare and deliver to the Income-tax Officer 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 employees ; and
 - (iv) particulars of sums paid in commutation or in lieu of annuities ;
- (c) furnish to the Income-tax Officer 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 Central Board of Revenue may reasonably require. ”

Amendment of section 59, Act XI of 1922.

77. In sub-section (2) of section 59 of the said Act, sub-clause (ii) of clause (a) shall be omitted, and sub-clause (iii) shall be re-numbered (ii).

Amendment of section 60, Act XI of 1922.

78. In section 60 of the said Act,—

- (a) in sub-section (2), after the words “ twelve months ” the following words, brackets and figures shall be inserted, namely :—

“ or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary ”, and

for the words “ such relief as it may think fit ” the words “ the appropriate relief ” shall be substituted ;

- (b) the following sub-section shall be added, namely :—

“ (3) After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (1) shall not be exercisable except for the purpose

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purpose of rescinding an exemption
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made."

79. For section 61 of the said Act the following sec-
tion shall be substituted, namely :—

Substitution of
new section for
section 61, Act
XI of 1922.

" 61. (1) Any assessee, who is entitled or required
to attend before any Income-tax authority
in connection with any proceeding under this
Act otherwise than when required under section
37 to attend personally for examination on
oath or affirmation, may attend by a person
authorised by him in writing in this behalf,
being a relative of or a person regularly
employed by the assessee, or a lawyer or
accountant or Income-tax practitioner, and
not being disqualified by or under sub-
section (3).

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(2) In this section,—

(i) a person regularly employed by the assessee
shall include any officer of a Scheduled
Bank with which the assessee maintains
a current account or has other regular
dealings ;

(ii) ' lawyer ' means a Barrister-at-Law or Soli-
citor or any other person entitled to plead in
any Court of law in British India ;

(iii) ' accountant ' means a registered accountant
enrolled in the Register of Accountants
maintained by the Central Government
under the Auditors Certificate Rules,
1932, or a holder of a restricted certificate
under the Restricted Certificate Rules,
1932, or a member of an association of
accountants recognised in this behalf
by the Central Board of Revenue ;

(iv) ' Income-tax practitioner ' means—

(a) any person who, before the 1st day of
April, 1938, attended before an Income-
tax authority on behalf of any assessee
otherwise than in the capacity of an
employee or relative of that assessee ;

(b) any

- (b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue ; or
 - (c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.
- (3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1) ; and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) :

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and
- (c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal."

Amendment of section 63, Act XI of 1922.

80. In sub-section (2) of section 63 of the said Act, for the words "association of individuals" the words "association of persons" shall be substituted.

Amendment of section 64, Act XI of 1922.

81. In section 64 of the said Act,—

- (a) in sub-section (1) for the word "business", where it first occurs, the words "a business, profession or vocation" shall be substituted ; for the word "business",

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"business", where it occurs for the second time, the words "business, profession or vocation" shall be substituted ; and for the words "his principal place of business" the words "the principal place of his business, profession or vocation" shall be substituted ;

(b) to sub-section (3) the following provisos shall be added, namely :—

" Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or under section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made. "

82. In section 66 of the said Act,—

Amendment of section 66, Act XI of 1922.

(a) in sub-section (2), the words, figures and letter "or of a decision by a Board of Referees under section 33A" and the words "or decision", in both places where they occur, shall be omitted ;

(b) in the first proviso to sub-section (2), the words and figures "or section 32" shall be omitted ;

(c) in the proviso to sub-section (7), the following words shall be added, namely :—

" unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising

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the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council”;

(d) in clause (a) of sub-section (8), the words “the North-West Frontier Province and” shall be omitted.

Amendment of section 66A, Act (XI) of 1922.

83. To sub-section (1) of section 66A of the said Act the following proviso shall be added, namely:—

“Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.”

Addition of Schedule to Act XI of 1922.

84. The following shall be added as a Schedule to the said Act, namely:—

“THE SCHEDULE.

[See section 10 (7).]

RULES FOR THE COMPUTATION OF THE PROFITS AND GAINS OF INSURANCE BUSINESS.

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure

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expenditure which may under the provisions
of section 10 of this Act be allowed for in
computing the profits and gains of a business,

whichever is the greater :

Provided that the amount to be allowed as manage-
ment expenses shall not exceed—

- (a) $7\frac{1}{2}$ per cent. of the premiums received during
the preceding year in respect of single premium
life insurance policies, *plus*
- (b) in respect of the first year's premiums received
in respect of other life insurance policies for
which the number of annual premiums received
is less than twelve, or for which the number of
years during which premiums are payable is
less than twelve, for each such premium or
each such year $7\frac{1}{2}$ per cent. of such first year's
premiums received during the preceding year,
plus
- (c) 85 per cent. of the first year's premiums received
during the preceding year in respect of other
life insurance policies and $8\frac{1}{2}$ per cent. of other
premiums received during that year in respect
of all life insurance policies other than single
premium life insurance policies.

3. In computing the surplus for the purpose of
rule 2,—

- (a) one-half of the amounts paid to or reserved
for or expended on behalf of policyholders
shall be allowed as a deduction :

Provided that in the first such computation
made under this rule of any such surplus
no account shall be taken of any such
amounts to the extent to which they are
paid out of or in respect of any surplus
brought forward from a previous intervalua-
tion period :

Provided further that if any amount so reserved
for policyholders ceases to be so reserved,
and is not paid to or expended on behalf
of policyholders, one-half of such amount,
if it has been previously allowed as a
deduction,

deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved ;

- (b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policyholders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

- (c) the whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the

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the annual average of the income-tax paid by deduction
at source from interest on securities or otherwise during
such period.

5. For the purposes of these rules—

(i) 'preceding year' means that year for which
annual accounts are required to be prepared
under the Insurance Act, 1938, immediately
preceding the year for which the assess-
ment is to be made or until the commence-
ment of the Insurance Act, 1938, the
previous year as defined in section 2 of this
Act ;

(ii) 'gross external incomings' means the full
amount of incomings from interest, divi-
dends, fines and fees and all other incomings
from whatever source derived (except
premiums received from policyholders and
interest and dividends on any annuity fund)
and includes also profits from reversions
and on the sale or the granting of annuities,
but excludes profits on the realisation of
securities :

Provided that incomings, including the annual
value of the property occupied by the
assessee, which but for the provisions of sub-
section (7) of section 10 would have been
assessable under section 9 shall be computed
upon the basis laid down in the last named
section, and that there shall be allowed from
such gross incomings such deductions as are
permissible under that section ;

(iii) 'management expenses' means the full
amount of expenses (including commissions)
incurred exclusively in the management of
the business of life insurance, and in the
case of a company carrying on other classes
of business as well as the business of life
insurance in addition thereto a fair propor-
tion of the expenses incurred in the general
management of the whole business. Bonuses
or other sums paid to or reserved on behalf
of policyholders, depreciation of, and losses

on the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules ;

(iv) 'life insurance business' means life insurance business as defined in clause (II) of section 2 of the Insurance Act, 1938 ;

(v) 'securities' includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance, after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India.

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9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company."

PART II.

85. After section 5 of the said Act the following section shall be inserted, namely :—

Insertion of new section 5A in Act XI of 1922.

"5A. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

The Appellate Tribunal.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932 :

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this subsection, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

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(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority ; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings."

Amendment of section 28, Act XI of 1922.

86. In section 28 of the said Act,—

- (a) in sub-section (1) and sub-section (2), for the words "or the Commissioner" the words "or the Appellate Tribunal", and for the words "he may direct" the words "he or it may direct" shall be substituted ;
- (b) in sub-section (5), for the words "or a Commissioner who has made" the words "or the Appellate Tribunal on making" shall be substituted.

Omission of section 32, Act XI of 1922.

87. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

88. For section 33 of the said Act the following section shall be substituted, namely :—

Appeals against orders of Appellate Assistant Commissioner.

- " 33. (1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.
- (2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal
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against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

(5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final."

89. In section 35 of the said Act, sub-sections (2) and (3) shall be renumbered sub-sections (3) and (4), respectively, and the following shall be inserted as sub-section (2), namely:—

Amendment of section 35, Act XI of 1922.

"(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal."

90. In section 37 of the said Act, for the words "and Commissioner" the words "Commissioner and Appellate Tribunal" and for the words "or Commissioner" in clause (c) the words "Commissioner or Appellate Tribunal" shall be substituted.

Amendment of section 37, Act XI of 1922.

91. In sub-section (2) of section 48 of the said Act, for the words "The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision" the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers" shall be substituted.

Amendment of section 48, Act XI of 1922.

Amendment of
section 66, Act
XI of 1938.

Statement of
case by Appel-
late Tribunal to
High Court.

92. In section 66 of the said Act,—

(a) for sub-sections (1), (2), (3), (3A), (4) and (5) the following sub-sections shall be substituted, namely :—

“(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be,

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he, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.”;

(b) in sub-section (6), the words “on the application of an assessee” shall be omitted;

(c) in sub-section (7A), for the words, brackets, figures and letter “under sub-section (3) or sub-section (3A)”, the words, brackets and figures “under sub-section (2) or sub-section (3)” shall be substituted.