

# ACT No. XXIII OF 1941.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
26th November, 1941.)

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

WHEREAS 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, 1941. Short title and  
commence-  
ment.

(2) It shall come into force at once; but effect  
shall not be given to the amendments hereby made in  
the Indian Income-tax Act, 1922, by section 4, section 6,  
section 7, section 8, clause (b) of section 10 and clause (a)  
of section 13 in the making of any assessment under  
that Act for any year before the year ending on the 31st  
day of March, 1943.

2. In clause (6C) of section 2 of the Indian Income-  
tax Act, 1922 (hereinafter referred to as the said Act),  
for the words "mutual insurance company" the words  
"mutual insurance association" shall be substituted. Amendment of  
section 2, Act  
XI of 1922.

3. After clause (ix) of sub-section (3) of section 4  
of the said Act the following clauses shall be inserted,  
namely :— Amendment of  
section 4, Act  
XI of 1922.

(x) Any income received—

- (a) by a person accredited as representative in  
British India for political purposes of an  
Indian State or the Ruler thereof, as his  
remuneration from the State or Ruler  
for service in such capacity ;
- (b) by a Consul General, Consul, Vice-Consul  
or Consular Agent of a foreign State, as  
remuneration from such State for service  
in such capacity ;
- (c) by a person employed by the consulate of a  
foreign State, not being a British subject  
or the subject of an Indian State, as  
remuneration from such foreign State  
for service in such capacity ;

(d) by

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- (d) by a Trade Commissioner or other official representative in British India of the Government of any other part of the British Empire or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country ;
- (e) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (d), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

(xi) With effect from the 2nd day of September, 1939, the income chargeable under the head " Salaries " of a Nepalese member of the Nepalese Military Force serving with His Majesty's Forces, or of any member of an Indian State Force so serving, and any other income accruing or arising without British India which is received in or brought into British India by any such member while the Force to which he belongs is serving with His Majesty's Forces.'

Amendment of section 4A, Act XI of 1922.

4. In clause (a) of section 4A of the said Act,—

(a) to sub-clause (iii) the word " or " shall be added ; and

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

" (iv) is in British India for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India for not less than three years from the date of his arrival : "

Amendment of section 5A, Act XI of 1922.

5. To sub-section (2) of section 5A of the said Act the following proviso shall be added, namely :—

" Provided that the Tribunal shall not be deemed to be invalidly constituted merely by reason of a temporary inequality caused by the death, retirement or removal of any member. "

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6. In section 10 of the said Act,—

Amendment of  
section 10, Act  
XI of 1922.

(a) in sub-section (2), in clause (b) of the proviso to clause (vi), after the words "owing to the profits or gains chargeable being less than the allowance," the following shall be inserted, namely:—

"then, subject to the provisions of clause (a) of the proviso to sub-section (2) of section 24,";

(b) in sub-section (5),—

(i) for clauses (b) and (c) the following clause shall be substituted, namely:—

"(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886, was in force:";

(ii) in the first proviso, for the words, brackets and letters "clauses (a), (b) and (c)" the words, brackets and letters "clauses (a) and (b)" shall be substituted;

(iii) the second proviso shall be omitted.

7. To section 12 of the said Act the following sub-section shall be added, namely:—

Amendment of  
section 12, Act  
XI of 1922.

"(4) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v) and (vi) of sub-section (2) of section 10 in respect of such buildings."

8. In sub-section (2) of section 14 of the said Act,—

Amendment of  
section 14, Act  
XI of 1922.

(a) to clause (b) the word "or" shall be added, and

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

"(c) in respect of any income, profits or gains accruing or arising to him within an  
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Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under section 42."

Amendment of  
section 16, Act  
XI of 1922.

9. In sub-section (2) of section 16 of the said Act,—

- (a) for the words beginning with " and shall be increased by the amount of income-tax " and ending with " deemed to have been paid, credited or distributed " the following words shall be substituted, namely :—

" and shall be increased to such amount as would, if income-tax (but not super-tax) 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, were deducted therefrom, be equal to the amount of the dividend : " ;

- (b) in the proviso, for the words " the income-tax to be added " the words " the increase to be made " shall be substituted.

Amendment of  
section 17, Act  
XI of 1922.

10. In section 17 of the said Act,—

- (a) in sub-section (1), after the words " a subject of a State in India or Burma, " the words " or a native of a Tribal Area, " shall be inserted ;

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

" (3) Where there is included in the total income of any assessee any income exempted from tax under clause (c) of sub-section (2) of section 14, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income.

- (4) Where any income exempted from tax under clause (c) of sub-section (2) of section 14  
which

which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in British India by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—

- (a) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in British India had such reduced income been his total income the same proportion as his total income bears to such reduced income, or
- (b) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the income so brought into or received in British India had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or received in British India,

whichever is the greater.”

11. In sub-section (3E) of section 18 of the said Act, for the brackets and words “(together with the amount of any income-tax payable by the company in respect thereof)” the brackets, words and figures “(increased in accordance with the provisions of sub-section (2) of section 16)” shall be substituted, and for the brackets and words “(together with the amount of such income-tax as aforesaid)” the brackets and words “(increased as aforesaid)” shall be substituted.

Amendment of section 18, Act XI of 1922.

12. To section 23 of the said Act the following sub-section shall be added, namely :—

Amendment of section 23, Act XI of 1922.

- “(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm by an order in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners.”

13. In

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Amendment of  
section 24, Act  
XI of 1922.

13. In sub-section (2) of section 24 of the said Act,—

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

“ Provided that—

(a) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of section 10, also to be carried forward, effect shall first be given to the provisions of this sub-section ; ” ;

(b) in the first proviso, for the words “ Provided that ” the brackets and letter “ (b) ” shall be substituted ;

(c) in the second proviso, for the words “ Provided further that ” the brackets and letter “ (c) ” shall be substituted ;

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

“ (d) where a change has occurred in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (b) of sub-section (1) of section 16 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b), and 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. ”

Amendment of  
section 25, Act  
XI of 1922.

14. To sub-section (4) of section 25 of the said Act the following proviso shall be added, namely :—

“ Provided that sub-sections (3) and (4) shall not apply—

(a) to super-tax except where the income, profits and gains of the business, profession or vocation

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vocation were assessed to super-tax for the first time either for the year beginning on the 1st day of April, 1920, or for the year beginning on the 1st day of April, 1921 ;

- (b) to a business, profession or vocation on which income-tax was at any time charged in the hands of a company under the Indian Income-tax Act, 1886, or on which income-tax would have been charged in the hands of a company for the assessment year ending on the 31st day of March, 1918, if the company having been in existence in that year had also been in existence in the year ending on the 31st day of March, 1917."

II of 1886.

15. In sub-section (2) of section 30 of the said Act, after the words " objected to " the following shall be inserted, namely :—

Amendment of section 30, Act XI of 1922.

" or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of section 23 was based and the apportionment thereof between the several partners or of the loss computed under section 24 "

16. In section 31 of the said Act,—

Amendment of section 31, Act XI of 1922.

(a) in clause (a) of sub-section (3), the words beginning with " and, in the case of an assessment " and ending with " any member of the association, " shall be omitted ;

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

"(4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(5) The Appellate Assistant Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner."

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Amendment of  
section 33, Act  
XI of 1922.

17. In section 33 of the said Act,—

- (a) in sub-section (1), for the words “on which he is served with notice of such order” the words “on which such order is communicated to him” shall be substituted;
- (b) in sub-section (2), for the words “at any time before the expiry of sixty days from the date of the order” the words “within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner” shall be substituted;

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

“(2A) The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.”.

Insertion of  
new section  
33A in Act  
XI of 1922.

Power of  
revision by  
Commissioner.

18. After section 33 of the said Act the following section shall be inserted, namely:—

“33A. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or
- (b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or
- (c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made

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within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal, or
- (b) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner, or
- (c) the order has been made the subject of an appeal to the Appellate Tribunal :

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees."

19. To sub-section (2) of section 34 of the said Act the following proviso shall be added, namely :—

Amendment of section 34, Act XI of 1922.

" Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 31, section 33, section 66, or section 66A."

20. In sub-section (1) of section 35 of the said Act, for the word and figure " section 33 " the word, figure and letter " section 33A " shall be substituted.

Amendment of section 35, Act XI of 1922.

21. For section 40 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 40, Act XI of 1922.

' 40. (1) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term " beneficiary ") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under

Guardians, trustees and agents.

this

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this Act, the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

(2) Where the trustee or agent of any person not resident in British India and not being a minor, lunatic or idiot (such person being hereinafter in this sub-section referred to as a beneficiary) is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from such trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Amendment of section 41, Act XI of 1922.

22. In sub-section (1) of section 41 of the said Act, for the words "appointed under a duly executed trust deed" the words "appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise" shall be substituted.

Amendment of section 45, Act XI of 1922.

23. In section 45 of the said Act, the words and figure "or section 32" shall be omitted.

Amendment of section 46, Act XI of 1922.

24. In section 46 of the said Act,—

- (a) in the proviso to sub-section (2), the words "in respect of the attachment and sale of debts due to the assessee" and the words "in respect of the attachment and sale of debts due to a judgment debtor" shall be omitted ;
- (b) to sub-section (7) the following proviso shall be added, namely :—

" Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due."

Substitution of new section for section 49B, Act XI of 1922.  
Income-tax on company's dividend deemed to have been paid by shareholder.

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

" 49B. Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in section 3 who is a shareholder of a company which is assessed to income-tax

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income-tax in British India or elsewhere, such person shall be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company."

26. For sub-section (1) of section 49C of the said Act the following sub-section shall be substituted, namely :—

Amendment of section 49C, Act XI of 1922.

"(1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of 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, the shareholder 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 preceding the year in which the dividend was paid, credited or distributed or is deemed to have been paid, credited or distributed."

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

27. To section 49D of the said Act the following Explanation shall be added, namely :—

Addition of Explanation to section 49D, Act XI of 1922.

'Explanation.—The expression "Indian income-tax" in this section means income-tax and super-tax charged in accordance with the provisions of this Act.'

28. In section 52 of the said Act, for the words, brackets and figures "or sub-section (2) of section 32" the words, brackets and figures "or sub-section (3) of section 33" shall be substituted.

Amendment of section 52, Act XI of 1922.

29. In clause (1) of sub-section (3) of section 54 of the said Act, for the words "to a Returning Officer" the words "to any person charged by law with the duty of inquiring into the qualifications of electors" shall be substituted.

Amendment of section 54, Act XI of 1922.

30. In sub-section (1) of section 58 of the said Act, for the words, brackets and figures "sub-section (2) of section 14" the words, brackets, letters and figures "clauses (a) and (b) of sub-section (2) of section 14" shall be substituted.

Amendment of section 58, Act XI of 1922.

31. In clause (d) of sub-section (1) of section 58C of the said Act, for the words "from the trustees" the words "by the trustees" shall be substituted.

Amendment of section 58C, Act XI of 1922.