

Companies Income Duty.

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A BILL INTITULED

AN ACT to impose a Duty upon the Net Income of Title. Joint Stock and other Companies.

WE, Your Majesty's most dutiful and loyal subjects, the House of Preamble.
Representatives of New Zealand, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely
5 and voluntarily resolved to give and grant unto Your Majesty the duties hereinafter mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted :

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the General Assembly of New Zealand
10 in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act shall be "The Companies Income Short Title.
Duty Act, 1878," and it shall come into operation on the *first* day of *January*, one thousand eight hundred and seventy-nine, which date is hereinafter referred to as "the commencement of this Act."

15 2. In the construction of this Act, and in all regulations to be Interpretation.
made as hereinafter provided, the following terms and expressions

shall have the meanings hereby assigned to them respectively, unless there be something in the context repugnant thereto or inconsistent therewith, that is to say,—

- “Company” means and includes every company or association of persons carrying on any business, trade, occupation, or operation, and incorporated under “The Joint Stock Companies Act, 1860,” or incorporated or registered under “The Mining Companies Act, 1872,” or under any other Act of the General Assembly, or any Ordinance of a Provincial Council, or established or constituted under or by virtue of any statute of the Parliament of Great Britain and Ireland, or of any grant, charter, or other authority made, issued, or created in Great Britain, or under or by virtue of any Act or Ordinance of the Legislature of any British colony or possession, or under or by virtue of any Act, grant, charter, or other authority passed, created, made, or issued anywhere out of New Zealand. 5
- “Local company” means any company, as hereinbefore defined, established or constituted in New Zealand, and includes a company incorporated out of New Zealand, but having a local board of directors or managers resident in the colony. 20
- “Foreign company” means a company, as hereinbefore defined, established or constituted out of the colony, but carrying on business within the colony. 25
- “Net income” means and includes all the gains or profits in any manner derived or made for or during any financial period as hereinafter provided by any company in carrying on the business for which it has been formed or established, or in any other manner howsoever, and which is or is proposed to be divisible amongst or appropriated to the shareholders or members of the company, or set apart, used, appropriated, or kept for their benefit or security, directly or indirectly, in any manner howsoever, or otherwise for promoting the business of the company. 35
- “Chairman” means the person (by whatever name designated) appointed to preside over the meetings of directors, trustees, or other the governing body of any company, and includes any person acting in that capacity. 35
- “Secretary” means the person for the time being acting as manager, secretary, or clerk to any company, and includes any officer or person having the general management or control of the business or affairs of such company. 40
- “Treasurer” includes any person acting in the capacity of treasurer, and the accountant, or any other officer of any company charged with the duty of preparing and keeping the books, accounts, and funds of the company. 45
- “General Manager” means the manager, secretary, attorney, agent, or other the chief or only executive officer of any foreign company within the meaning of this Act, and appointed as hereinafter provided. 50
- “Prescribed” means prescribed by the rules to be made under this Act.
- “Statutory declaration” means a declaration made in Great Britain or Ireland, or any British colony, or New Zealand, before a Justice of the Peace, Notary Public, or other person having authority to take or receive a declaration, under any statute for the time being in force; and, if made in any foreign country, means a like declaration taken before a British Consul or Vice-Consul, or other person having 60

authority to take or receive such a declaration under any Act of the Imperial Parliament for the time being authorizing the taking thereof.

“Gazette” means the *New Zealand Gazette*, and “gazetted” means published in such *Gazette*.

5 **3.** The Commissioner of Stamps for the time being holding office under “The Stamp Act, 1875” (herein referred to as “the Commissioner”), shall be charged with the administration of this Act, and the chief control of all matters relating to the duty hereby imposed, and
10 therein shall have all the powers and authorities hereinafter provided.

Commissioner of Stamps to administer Act.

15 **4.** The Commissioner may also employ all such clerks, officers, and persons as he may deem necessary for carrying out this Act; and the Deputy Commissioners of Stamps appointed under “The Stamp Act, 1875” shall, under the direction of the Commissioner, aid in
20 doing all things necessary to give effect to this Act, and to assist the Commissioner in raising, levying, collecting, receiving, and accounting for the said duty, and for putting this Act into execution in as full and ample a manner as possible.

May employ clerks, &c.

25 **5.** All the charges and expenses of administering this Act shall be paid out of moneys to be appropriated from time to time by the General Assembly.

Expenses of Act to be paid out of moneys appropriated by General Assembly.

 The Commissioner and every Deputy Commissioner, and all other persons employed as aforesaid, shall, in all matters not herein specially provided for, be guided by and be liable to the regulations to
30 be made hereunder.

Commissioner and officers to be guided by regulations.

6. The Governor in Council may from time to time make, alter, or revoke such regulations as may be necessary for fully carrying out the objects and purposes of this Act, and may by such regulations—

Governor in Council may make regulations for certain purposes.

35 (1.) Define the duties of the Commissioner, and all officers and persons under his direction or control, and may prescribe in what manner the same are to be discharged and performed.

 (2.) Prescribe the mode to be adopted in estimating income, and the valuation of the gains and profits derivable by any company from the business carried on by it in New Zealand.

40 (3.) Prescribe the mode of preparing and delivering returns and statements of income, and the place where the same shall be delivered, and may also prescribe the forms of all such returns and statements.

 (4.) Prescribe the mode in which any company seeking exemption or relief from or abatement of duty may prefer a claim thereto, and the principles to be followed in allowing reductions and exemptions.

45 In and by any such regulations penalties may be prescribed for the breach thereof, but no penalty shall exceed the sum of *one hundred pounds*.

50 **7.** All such regulations shall be gazetted, and shall take effect from a day to be therein stated, being not less than ten days from the gazetting, and thereupon shall have the force of law and be deemed to be part of this Act, and they shall be laid before the General Assembly within ten days after the same are gazetted if the General Assembly be then sitting, and if not, then within ten days after the first meeting of such Assembly after the making thereof.

To take effect from a stated day.

55 **8.** For the year commencing on the *first* day of *January*, one thousand eight hundred and seventy-nine, and every year thereafter, there shall be charged, levied, raised, collected, and paid for the use of Her Majesty, a duty upon the net income of all companies carrying on business in New Zealand within the meaning of this Act, of *threepence* upon and for every pound of such income beyond the
60 first *one hundred pounds*.

Duty of 12 per cent. on annual income of companies.

 Such duty shall be payable at half-yearly periods, as hereinafter provided.

No duty payable by certain bodies.

9. No duty shall be payable under this Act in respect of the income of any company or association of a religious, educational, or charitable nature, nor in respect of the income of any duly registered friendly society, trade union, building society, or any duly constituted savings bank.

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Company to state where business carried on.

10. Every company carrying on business in New Zealand at the commencement of this Act shall, within one month thereafter, transmit to the Commissioner a notice, in writing, signed by the Chairman and by the Secretary, stating the principal or only place in the colony where the company carries on business.

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Like statement to be made when companies established hereafter.

11. Every company incorporated or established after the commencement of this Act shall, before it commences business, transmit to the Commissioner a like notice in writing, signed as aforesaid, stating the principal or only place where such company proposes to carry on business.

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Notice may be amended.

12. Any such notice may be amended or withdrawn, and another notice substituted for the same; but so long as any such notice remains in force, and until another has been substituted therefor, the place therein mentioned shall be deemed to be the principal or only place where the company carries on business.

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Foreign companies to appoint General Manager.

13. Every foreign company carrying on business in New Zealand at the commencement of this Act shall, within *six* months thereafter, appoint a person residing in the colony to be called the "General Manager."

After the expiration of such period of *six* months, no such company shall continue to carry on or engage in business unless and until such General Manager shall be duly appointed.

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No foreign company established after the commencement of this Act shall commence or enter into business unless and until such company shall have appointed a General Manager as aforesaid.

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Evidence of appointment.

14. A statutory declaration made by the Chairman and the Secretary of any foreign company, taken before a notary public, stating that the company is incorporated under the style mentioned, and that the person appointed to be General Manager has been so appointed for the purposes of this Act, shall be *prima facie* evidence of the facts therein set forth, and of the appointment of such General Manager.

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Declaration and evidence of incorporation of company to be deposited with Commissioner.

15. Such declaration, together with a true copy of the appointment of such manager, and an exemplification or attested copy of the certificate of incorporation, grant, charter, Act, or other instrument incorporating such company, and every deed of settlement, articles of association, or other instrument for regulating the business of the company, shall be deposited with the Commissioner.

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Every such certificate, grant, charter, Act, or other instrument, shall be verified by the statutory declaration of the General Manager.

If Manager dies or ceases to reside in the colony, another to be appointed.

16. Whenever any General Manager shall die, resign, or cease to hold office as such General Manager, or to reside in the colony, the company shall as soon as conveniently may be thereafter, appoint another in his stead, and in such case a like declaration shall be furnished; but no further evidence of the incorporation of the company shall be necessary, unless some change in the constitution or purposes for which it was established has been made, when the nature of such change shall be set forth in the declaration.

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Office copy of power of attorney to be sufficient evidence of appointment.

17. Where any person has been appointed the Attorney of any company in the manner provided in "The British Companies Act, 1865," an office copy of the power of attorney deposited under that Act, verified by the statutory declaration of such Attorney, as being still subsisting unrevoked or affected, shall be sufficient evidence of such appointment for the purposes of this Act, and every such Attorney shall be deemed to be a General Manager within the meaning of this Act.

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18. Any act, statement, or representation done or made by any such General Manager so appointed as aforesaid, in respect of any matter or thing required to be done or performed under this Act, relating or pertaining to the business of the company for which he is such General Manager, shall be deemed the act, statement, or representation of such company, and shall be of the same force and effect as if made by such company.

Act of General Manager to be deemed act of company.

19. Any notice, process, or proceeding which under this Act may be taken against any company, may, in the case of a foreign company, be given to, served upon, or taken against any such General Manager; and if at any time there be no General Manager, then any such notice, process, or proceeding may be given to, served upon, or taken against any officer or person acting or appearing to act in the business or affairs of such company.

Service of notice or process on company to be deemed sufficient if given to or upon General Manager.

20. If any company fails or neglects to comply with the provisions of the *tenth*, the *eleventh*, the *thirteenth*, and *sixteenth* sections of this Act, then, and in any such case,—

Penalty on companies for neglect of certain provisions.

(1.) The Chairman and Secretary, in the case of a local company, shall each be liable to a penalty of not less than *fifty* nor more than *two hundred* pounds; and

(2.) In the case of a foreign company, such company shall be and be deemed incapable of carrying on or continuing any business in which it has engaged or proposes to engage; and the General Manager and every person so carrying on or acting in the management of any such business shall be liable to a penalty not exceeding *one hundred* pounds.

21. The period between the *first* day of *April* and the *last* day of *September* in any year, and the period between the *first* day of *October* in any year and the *last* day of *March* in the next succeeding year, shall respectively be deemed to be a "financial period" for the purposes of this Act; and the duties hereby charged shall be payable half-yearly, in the manner and at the times hereinafter mentioned.

Definition of financial period.

Duties to be paid half-yearly.

All duty arising under this Act, when collected, shall be paid into the Public Account, and be part of the consolidated revenue of the colony.

22. Every company carrying on business in New Zealand shall, on the *first* day of each financial period in each year, or within *seven* days thereafter, prepare and make up at the principal or only place of business in the colony a statement in the prescribed form, showing—

Companies to make up half-yearly statement of business, showing profits.

(1.) The assets and liabilities of such company, and the amount of capital paid up to date;

(2.) The rate and amount of the last dividend that may have been declared to the shareholders or proprietors or that may be proposed to be so declared;

(3.) The amount of the reserve or other profit at the time of declaring such dividend or at any other period included in the statement;

(4.) And showing in a full and distinct manner, and in accordance with the requirements of this Act and the regulations, the condition and affairs of the company up to the last day of the last preceding financial period, and the net income of the company for such financial period.

The period between the commencement of this Act and the *first* day of *April*, one thousand eight hundred and seventy-nine, shall be deemed a financial period for the purposes of this Act, and the statement hereinbefore required shall be prepared for such period accordingly.

Definition of financial period for first part of year 1879.

Such statement shall also be prepared in every case where a company has commenced business at any time within a financial period, and shall be made out for the actual period it has so carried on business, and duty shall be payable accordingly.

Statement required in every case where company commences business in current financial period.

23. As regards foreign companies, such statement shall be based upon the business actually transacted in the colony, according to the latest advices received by the General Manager.

Statement of foreign companies to show business done in the colony.

Until the appointment of a General Manager in accordance with this Act, any statement required thereunder shall be made and verified by any person acting as the chief or only agent of any such company, or such other person as the Commissioner may approve.

Commissioner may accept a composition in certain cases.

Where it shall appear to the Commissioner that any foreign company carrying on business cannot conveniently comply with the terms of this section, he may agree with the General Manager to accept a sum certain by way of composition for the duty payable under this Act; but such composition shall be made only in respect of one financial period, but may be made from time to time in respect of any other such period. 5 10

Statements to be verified by declaration.

24. Every such statement shall be verified by statutory declaration, to be made—

(1.) In the case of a local company, by the Chairman and Secretary; 15

(2.) In the case of a foreign company, by the General Manager.

Forms of statement to be supplied.

The Commissioner may supply forms to any company, which he shall require to be filled up, and the like forms shall be sent to each company doing the same kind of business.

Statements to be filed with Commissioner.

25. The statement so made out, together with the declaration verifying the same, shall be forthwith left with or transmitted to the Commissioner, who shall, on or before the *first* day of *May* and the *first* day of *November* in each year, fix and assess, according to the best of his judgment, by a fair and reasonable valuation, the amount of net income of such company upon which duty is payable for the financial period embraced in the said statement. 20 25

The amount of any such assessment shall not be disclosed by the Commissioner or any person in his department to any other company or person except as provided by this Act.

Notice of duty payable to be given to company.

26. The Commissioner shall forthwith cause to be given to or delivered at the principal or only place of business of each company a notice in writing, in the prescribed form, stating the amount of duty for the last preceding financial period, or for such proportionate part of such period as the Commissioner shall think just, where a company has carried on or commenced business for a part of such period. 30 35

How notices to be signed and served.

27. Such notices shall be signed by the Commissioner or such person as may be prescribed in that behalf, and may be given to the company by being posted to or delivered at the principal or only place of business of such company.

Every notice shall contain a direction stating where and to whom the duty shall be payable. 40

Notices to be closed.

28. Every such notice shall be closed so that the contents thereof may not be seen, and if such notice shall be posted or delivered as aforesaid, evidence that the same was so posted or delivered shall be evidence that a notice was received by the company at the time of delivery, or on the day on which such notice would in the ordinary course of post be delivered or receivable at such place. 45 50

A receipt purporting to be signed by a Postmaster at any place where any such notice may be posted, acknowledging the receipt of any notice purporting to be a notice under this Act, shall be *prima facie* evidence that the same was duly posted. 50

Company may apply to Commissioner to reduce assessment.

29. Any company aggrieved by any such assessment may, at any time within *twenty-one* days after payment of the duty within the period prescribed by this Act, apply to the Commissioner to alter or reduce the amount of such assessment, and the Commissioner shall have power, if he is satisfied that the claim is reasonable, to alter or reduce the same accordingly. 55

Company may appeal to Judge of Supreme Court.

30. Any company that has applied to the Commissioner for redress, and is dissatisfied with his determination, may appeal therefrom to a Judge of the Supreme Court at or nearest to the principal or only place of business of such company, on the ground that the net income of such Company for the financial period is overstated; and the said Judge shall hear and determine all such appeals in chambers, and shall have power to alter the assessment or confirm the same. 60 65

31. The Judges of the Supreme Court, or any three of them, may from time to time make rules regulating the mode of hearing all such appeals, and for prescribing the forms to be used in connection therewith.

Judges may make rules for appeals.

5 **No** such appeal shall be entertained unless notice in writing, specifying the grounds thereof, is given by the appellant to the Commissioner within *twenty-one* days after the delivery or service of such notice of assessment as aforesaid.

Notice of appeal to be given.

32. The Commissioner, in exercise of any power conferred or duty imposed upon him by this Act, and every Judge of the Supreme Court in case of an appeal from the Commissioner's decision, may issue a summons to the chairman of a company, or to any director, secretary, treasurer, general manager, or to any other officer of any company, to appear before the Commissioner or Judge, as the case may be, to give evidence touching or concerning the business transactions and dealings of such company for any financial period, and to produce any books, papers, accounts, vouchers, writings, or documents of such company, or under the control of any such person and relating to such business.

Commissioner or Judge may issue summons to directors, &c., to give evidence.

33. Such summons shall be in the prescribed form, and every person failing to appear upon such summons without lawful excuse, or to produce any such books, papers, writings, or documents, shall be liable to a penalty not exceeding *one hundred* pounds.

Form of summons.

34. The Commissioner or any Judge may examine any such person on oath, or in such other manner as a witness may now be examined in a Court of law, and the Commissioner and every Judge shall have all such powers and authorities in respect of persons summoned as Judges of the Supreme Court have in their ordinary jurisdiction in such Court in a trial of civil issues at *nisi prius*.

Persons may be examined on oath, or otherwise as allowed in any Court of law.

35. Every person so summoned shall be subject to the same liabilities and the same pains and penalties, and shall be entitled to the like privileges and protection, as if he were a witness in the Supreme Court on any such trial as aforesaid.

Privileges and liabilities of witnesses.

Any person knowingly and wilfully giving false evidence upon any examination under this Act shall be deemed guilty of perjury, and punishable accordingly.

Punishment of perjury.

36. In any case where the Commissioner thinks fit, from the nature of the case, he may accept evidence upon any matters wherein he requires information upon statutory declaration to be made by the chairman or a director, or by a general manager, or by an officer of the company.

Power to accept evidence upon declaration.

In any case where he deems it expedient, the Commissioner may authorize the Deputy Commissioner at or nearest the principal or only place of business of such company to exercise all or any of the powers vested in him by this Act relative or incident to the summoning, examination, or other dealing with a person summoned to give evidence for any of the purposes aforesaid.

Power to delegate functions to a Deputy Commissioner.

37. No appeal to the Commissioner or to a Judge of the Supreme Court shall delay the payment of any duty assessed under this Act, but all such duty shall be paid and payable as if there had been no appeal; and if upon such appeal the same shall be allowed, either wholly or in part, the excess of the amount properly payable shall be returned to the company paying the same.

Appeal not to stay payment of duty.

38. If any appeal to a Judge shall be allowed, the appellant shall serve upon the Commissioner or Deputy Commissioner at or nearest to the place where the appeal shall be heard an office copy of the order made by the Judge thereon, and the Commissioner shall cause the record of his office in respect of such assessment to be altered in such form as may be prescribed.

If appeal allowed, records to be altered accordingly.

39. The amount of duty stated in the assessment notice herein-after mentioned shall be deemed to be a debt of record due to Her Majesty, and may be recovered accordingly; and the same shall, within

Duty to be a debt to the Crown.

seven days after the posting or delivery of such notice, be paid to the Commissioner or the Deputy Commissioner at the place named in, and in accordance with, the notice to be given as hereinbefore provided.

Duty may be recovered at suit of Commissioner.

40. If any company liable to pay any duty fails to pay the amount thereof for the space of *seven* days after notice of assessment in writing has been posted or delivered as aforesaid, the same may be recovered by the Commissioner in an action or suit brought in his name of office in any Court of competent jurisdiction. 5

But nothing herein contained shall prevent any suit being commenced or prosecuted by or on behalf of Her Majesty the Queen, under "The Crown Debts Act, 1866." 10

If duty not paid, then shareholders liable.

41. If for the space of *two* months after such demand the duty payable, or any judgment obtained or execution issued in respect thereof, shall remain unsatisfied, the duty payable shall be recoverable from, and any judgment or execution may be enforced against, any person or persons who were shareholders or members of the company when the duty became payable. 15

Foreign company making default disabled from carrying on business.

If a foreign company shall make default as aforesaid, it shall be incapable of continuing or carrying on business in New Zealand, and any duty payable, or any such judgment or execution as aforesaid, may be enforced against the General Manager of the company, or the person who was General Manager at the time such duty became payable. 20

If company wound up, then duty a first charge on assets.

42. Where a company shall be in any manner wound-up in New Zealand under any law authorizing the same, all duty payable under this Act shall be a first charge on the assets and property of the company, and shall be paid accordingly. 25

Service of notices at office of company sufficient.

43. Service of every demand, notice, or proceeding, which under this Act may be served upon, given to, or taken against or in respect of any company, shall be deemed to be sufficient if left at the chief place or only place of business of the company, or served upon any adult person on the premises or appearing to be in possession or charge thereof. 30

Receipts of Stamp Department good discharges for duty.

44. The receipt of any Deputy Commissioner, or other officer of the Stamp Department duly authorized in that behalf, shall be a good discharge to any company paying any duty under this Act. 35

Penalty on officers of companies in certain cases.

45. If any chairman, director, secretary, treasurer, or other officer of a local company, or the general manager or other officer of a foreign company, shall, in respect of any company which is or ought to be charged with duty on its net income as directed by this Act or any regulations made thereunder, do any of the following things:— 40

- (1.) Makes or delivers any false statement of income, for the purpose of evading payment of amount of duty;
- (2.) Produces or uses for any purpose, and on any occasion required by this Act, any books, accounts, or instruments which have been wilfully defaced, altered, or falsified, or which are in any respect wilfully inaccurate;
- (3.) By any falsehood, wilful neglect, fraud, covert act, or contrivance whatsoever, used or practised, evades or attempts to evade the payment of any amount of duty;
- (4.) Makes any false or fraudulent claim to have any amount of duty reduced or remitted, whether such duty has been reduced or remitted;
- (5.) Neglects or refuses to comply with any directions or requirements of the Commissioner in any matter authorized by this Act, or prescribed by the regulations: 55

Every such person shall, on proof thereof, be personally liable to pay and shall pay treble the amount of duty of which payment has been sought to be evaded, and, in addition, shall upon conviction be liable to forfeit and pay a penalty of not less than *twenty* nor more than *two hundred* pounds. 60

46. Any person aiding and assisting in any manner whatsoever to commit any act contrary to the provision of the last preceding section shall upon conviction be liable to forfeit and pay a penalty of not less than *five* pounds nor more than *fifty* pounds.

Penalty on person aiding and assisting in any such cases.

5 47. All penalties imposed by this Act or any regulations shall, when no other mode of proceeding is provided, be heard, determined, and recovered in a summary way, as provided by "The Justices of the Peace Act, 1866."

Penalties to be recovered summarily.

10 48. Nothing in this Act shall interfere with or affect any stamp or other duty now or that may hereafter be payable by any company.

Act not to affect other duty payable by companies.