

Hon. Mr. Nash.

LAND AND INCOME TAX AMENDMENT.

ANALYSIS.

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A BILL INTITULED

Title.	AN ACT to amend the Land and Income Tax Act, 1923. BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—	5
Short Title.	1. This Act may be cited as the Land and Income Tax Amendment Act, 1939, and shall be read together with and deemed part of the Land and Income Tax Act, 1923 (hereinafter referred to as the principal Act).	
See Reprint of Statutes, Vol. VII, p. 271	2. This Act shall apply with respect to the tax for the year of assessment commencing on the first day of April, nineteen hundred and forty, and for every subsequent year.	10
Application of this Act.	3. In the case of persons engaged outside New Zealand in any of His Majesty's naval, military, or air forces in connection with the present war, the pay and allowances earned by them outside New Zealand as members of such forces shall not be assessable for income-tax.	15
Exemption from income-tax of pay of soldiers, &c., serving overseas.	4. (1) In calculating the assessable income of any employer, the Commissioner may allow as a deduction any sums paid by that employer by way of wages, salary, or allowance to any employee in respect of any period after that employee has been called up for service in any of His Majesty's naval, military, or air forces, whether within New Zealand or elsewhere: Provided that no deduction shall be allowed under this section in excess of the rates of the wages, salary, or allowance payable to the employee at the time when he was so called up, or in excess of the rate of <i>four</i> pounds a week, whichever is the less.	20 25 30
Deduction from employer's assessable income of wages paid to employees while on naval, military, or air service.	(2) For the purposes of this section, the term "employee" means, in respect of any employer, a person who, when he was called up as aforesaid, was employed under such circumstances that the wages,	35

salary, or allowance paid to him by his employer is allowable as a deduction in calculating that employer's assessable income; and the term "employer" has a corresponding meaning.

5 **5.** Section sixteen of the principal Act is hereby amended by adding the words "or (in any case where the returns so made are fraudulent or wilfully misleading or, in the case of returns of income, omit all mention of income which is of a particular nature or
10 was derived from a particular source, and in respect of which a return is required to be made) after the expiration of *seven* years from the end of the year in which the assessment was made".

Section 16 of principal Act (as to amendment of assessments) amended.

15 **6.** (1) For the purposes of this section,—
"Basic rates" means the rates of income-tax specified in clauses one to four of Part II of the Schedule to the Land and Income Tax (Annual) Act, 1939:
20 "Annual rates" means the rates of income-tax fixed for any year of assessment by the annual taxing Act for that year.

Power to assess income-tax at basic rates, subject to increase or reduction in accordance with annual taxing Act, 1939, No. 4

(2) The Commissioner may in any year of assessment (whether before or after the passing of the annual taxing Act for that year) assess the income-tax
25 of any taxpayer at the basic rates. No such assessment shall be deemed to be invalid on the ground that it is made before the passing of the annual taxing Act.

(3) If the annual rates for any year of assessment
30 are higher or lower than the basic rates the amount of every assessment of income-tax made under this section in respect of that year shall be deemed to be increased or reduced accordingly, and every such assessment shall have the same effect as if the amount
35 thereof as so increased or reduced had been specified therein.

7. (1) Section seventy-four of the principal Act is hereby amended as follows:—

Section 74 of principal Act (as to personal exemption) amended. 1936, No. 34

40 (a) By inserting in subsection one (as set out in paragraph (a) of subsection one of section six of the Land and Income Tax Amendment Act, 1936), after the words "public authority", the words "or an unincorporated body":

- 1939, No. 3 (b) By omitting from the first proviso to subsection two (as amended by paragraph (b) of section thirteen of the Finance Act, 1939) the words “whose assessable income for the income year does not exceed two hundred pounds”. 5
- Repeals.
1936, No. 34 (2) Paragraph (b) of subsection one of section six of the Land and Income Tax Amendment Act, 1936, and paragraph (b) of section thirteen of the Finance Act, 1939, are hereby consequentially repealed.
- 1939, No. 3 (3) The said section seventy-four of the principal 10 Act is hereby further amended by adding the following subsections :—
- “(3) From the yearly assessable income of every absentee (not being a person to whom the *next succeeding* subsection applies), there shall for the purpose of assessing 15 income-tax on that income, be deducted by way of special exemption the sum of fifty pounds.
- “(4) From the yearly assessable income of every person who, being an absentee, is personally present in 20 New Zealand during any part of the income year for the purpose of deriving income from New Zealand there shall, for the purpose of assessing income-tax on that income, be deducted by way of special exemption a sum bearing to the amount of the special exemption to which he would 25 have been entitled under subsection *one* of this section if he had not been an absentee the same proportion as the number of days during which he was personally present in New Zealand as aforesaid bears to the number of days in the income year.”
- Extending special exemptions in respect of wife or husband.
1932-33, No. 40 8. (1) Section four of the Land and Income Tax 30 Amendment Act, 1932-33, is hereby amended by omitting from subsection one the words “being a married man (other than an absentee)”, and substituting the words “(other than an absentee) who at 35 any time during the income year is a married man”.
- 1933, No. 43 (2) Section two of the Land and Income Tax Amendment Act, 1933, is hereby amended by omitting from subsection one the words “being a married woman (other than an absentee)”, and substituting the words 40 “(other than an absentee) who at any time during the income year is a married woman”.

(3) A taxpayer whose marriage is terminated during any income year, whether by death or otherwise, shall not be entitled in respect of that income year to a special exemption in respect of a housekeeper under section three of the Land and Income Tax Amendment Act, 1933, if the taxpayer is entitled in respect of that year to a special exemption under section four of the Land and Income Tax Amendment Act, 1932-33, or section two of the Land and Income Tax Amendment Act, 1933, as the case may be, or to a special exemption allowed instead thereof under section *thirteen* of this Act.

(4) Subsection three of section four of the Land and Income Tax Amendment Act, 1932-33, and subsection three of section two of the Land and Income Tax Amendment Act, 1933, are hereby repealed.

9. Section three of the Land and Income Tax Amendment Act, 1933, is hereby amended as follows:—

(a) By omitting from subsection one the words “ who is employed by a widow or widower to have the care and management of the home of her employer, or ”.

(b) By omitting from subsection two the words “ or widower ”, and substituting the words “ or a widower or a divorced person ”.

10. (1) The special exemption provided for by section seventy-five of the principal Act shall be allowed in the case of a child or grandchild who dies during the income year and in respect of whom a special exemption under that section would have been allowable if the child had not died.

(2) Paragraphs (b) and (c) of subsection one of section fourteen of the Land and Income Tax Amendment Act, 1929, and subsection two of that section are hereby repealed.

11. (1) Every person, other than an absentee, shall be entitled to a deduction by way of special exemption from his assessable income of the amount (not exceeding in the aggregate fifty pounds in respect of any one relative) contributed by him during the income year towards the support of any relative.

(2) For the purposes of this section the term “ relative ” means a person proved to the satisfaction of the Commissioner to be a relation of the taxpayer

1933, No. 43

1932-33, No. 40

Repeals.

Amending provisions as to special exemption in respect of housekeepers. 1933, No. 43

Extending special exemption in respect of children.

Repeals.

See Reprint of Statutes, Vol. VII, p. 348

Special exemptions in respect of contributions to support of dependent relatives.

by blood, marriage, or adoption (not being the wife, husband, child, stepchild, or grandchild of the taxpayer); and includes a former wife of the taxpayer; but does not include any person to whom or on whose behalf a monetary benefit is payable out of the Social Security Fund. 5

(3) Where claims are made under this section by two or more taxpayers for deductions by way of special exemption exceeding fifty pounds in the aggregate in respect of contributions towards the support of the same person the Commissioner shall not allow a greater exemption in the aggregate than fifty pounds, to be apportioned among the several taxpayers in such manner as the Commissioner thinks fit. 10 15

Repeals.

1935, No. 32

Altering limit of special exemption for insurance premiums, &c.

(4) Section seventy-six of the principal Act and section four of the Land and Income Tax Amendment Act, 1935, are hereby repealed.

12. (1) Section seventy-seven of the principal Act is hereby amended by repealing subsection three, and substituting the following subsection:— 20

“(3) The deductions by way of special exemption provided for in this section shall not in any case exceed in the aggregate the sum of one hundred and fifty pounds or fifteen per centum of the assessable income of the taxpayer, whichever amount is the less.” 25

Repeal.

Aggregation of incomes of husband and wife.

(2) Section five of the Land and Income Tax Amendment Act, 1924, is hereby repealed.

13. (1) In this section,—

“Absentee” means an absentee within the meaning of Part VI of the principal Act: 30

“Aggregable income” means the income, whether assessable or non-assessable, derived by a married woman while living with her husband:

“Aggregable assessable income” means that portion of the aggregable income that consists of assessable income: 35

“Aggregate assessment” means an assessment made under subsection *four* of this section:

“Non-assessable income” means non-assessable income to which section six of the Land and Income Tax Amendment Act, 1931, applies: 40

“Separate assessment” means an assessment made under subsection *six* of this section.

See Reprint of Statutes, Vol. VII, p. 353

(2) For the purposes of this section a married woman shall be deemed to be living with her husband unless the Commissioner is satisfied that she is in fact separated and living separate and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.

(3) This section applies with respect to the assessment of income-tax—

(a) Upon the assessable income derived by a married man during any income year in every case where the income (whether assessable or non-assessable) derived by him during that income year and the aggregable income derived by his wife during that year both exceed fifty pounds ; and

(b) Upon the aggregable assessable income derived by a married woman during any income year in every case where the aggregable income derived during that year by her and the income (whether assessable or non-assessable) derived by her husband during that year both exceed fifty pounds,—

but does not apply in any other case.

(4) Subject to the provisions of this section, the aggregable income derived by a married woman in any income year shall, for the purpose of assessing income-tax thereon, be deemed to be income derived by her husband on his own behalf during that year, and the husband shall be assessable and liable for income-tax accordingly.

(5) In computing for the purposes of an assessment under the *last preceding* subsection (hereinafter referred to as an aggregate assessment) the taxable income of any taxpayer (being a married man) other than an absentee, the Commissioner shall allow, instead of the special exemptions provided for by section seventy-four of the principal Act, section four of the Land and Income Tax Amendment Act, 1932-33, and section two of the Land and Income Tax Amendment Act, 1933, a special exemption of two hundred and fifty pounds. In computing for the purposes of an aggregate assessment the taxable income of an absentee, the Commissioner shall allow, instead of the special exemption provided

1932-33, No. 40

1933, No. 43

for by section seventy-four of the principal Act (as amended by section *seven* of this Act), a special exemption of one hundred pounds. Subject to the foregoing provisions of this subsection, the Commissioner, in computing the taxable income of any taxpayer for the purposes of an aggregate assessment, shall allow all other special exemptions and all deductions under section eighty-one of the principal Act to which the taxpayer and his wife, or either of them, would have been entitled if they had been assessed for income-tax otherwise than in accordance with this section. 5 10

(6) Notwithstanding anything to the contrary in the foregoing provisions of this section, the Commissioner may make separate assessments of the assessable income derived by a married man during any income year and of the aggregable assessable income derived by his wife during that year, and shall make such separate assessments if required so to do by notice in writing signed by or on behalf of the married man or his wife and delivered to the Commissioner before the making of an aggregate assessment. In respect of such separate assessments the following provisions shall apply:— 15 20

(a) The special exemption of two hundred and fifty pounds or of one hundred pounds, as the case may be, provided for by subsection *five* of this section shall be apportioned between the married man and his wife in the proportions that the assessable income and the aggregable assessable income derived by them respectively bear to the total income that would, but for this subsection, have been assessable to the husband by an aggregate assessment: 25 30

(b) The other special exemptions and the deductions referred to in subsection *five* of this section shall be allowed partly to the married man and partly to his wife or wholly to the married man or wholly to his wife as the Commissioner in his discretion considers just and equitable: 35

(c) The rate of tax payable in respect of the taxable income separately assessed to the married man and his wife shall be the rate that would have been applicable if the income had been assessed wholly to the married man by an aggregate assessment: 40

(d) The married man shall be solely liable for the tax assessed to him, and his wife shall be solely liable for the tax assessed to her.

5 (7) At any time before payment in full of the tax payable under any aggregate assessment the Commissioner may, if he thinks fit, cancel the assessment and make separate assessments in its place.

10 (8) The tax payable by a married man in any year under an aggregate assessment, or by a married man and his wife under separate assessments, shall not in any case be less than the total income-tax that would have been payable by the married man and his wife in that year if this section had not been passed :

15 Provided that this subsection shall not apply in any case where, in making an aggregate assessment or separate assessments, the Commissioner has allowed a deduction under section eighty-one of the principal Act in respect of a loss incurred by the married man or his wife.

20 (9) Every married woman who derives aggregable income exceeding fifty pounds in any income year during which her husband derives income (whether assessable or non-assessable) exceeding fifty pounds shall in the next succeeding year furnish to the Commissioner (in addition to all other returns that she is required to make) a return of that aggregable income, in such form and at such time as the Commissioner may require.

30 (10) Every married man who derives income (whether assessable or non-assessable) exceeding fifty pounds in any income year during which his wife derives aggregable income exceeding fifty pounds shall in the next succeeding year furnish to the Commissioner (in addition to all other returns that he is required to make) a return of the income so derived by him, in such form and at such time as the Commissioner may require.

35 (11) Nothing in the foregoing provisions of this section shall preclude the assessment for income-tax otherwise than in accordance with this section of any income derived by a married woman and not assessable under this section, but in making any such assessment no regard shall be had to any aggregable income that is assessable under
40 this section.

Assessable
income to
include income
derived from
use or
occupation
of land.

14. (1) The assessable income of any person shall, for the purposes of the principal Act, be deemed to include—

(a) All profits or gains derived from the use or occupation of any land :

(b) All profits or gains derived in any income year 5
from the extraction, removal, or sale of any
minerals, timber, or flax, whether by the owner
of the land from which they are obtained or
by any other person, reduced by an amount
equal to the cost of those minerals or of that 10
timber or flax :

Provided that in any case where profits or
gains from any minerals, timber, or flax are
derived in two or more income years and an
estimated proportion of the total cost thereof 15
is claimed as a deduction in respect of each
of those years, the total amount of those
deductions in respect of all those years shall
not exceed the total cost of the minerals,
timber, or flax. 20

(2) For the purposes of paragraph (b) of the *last*
preceding subsection the term "timber" shall be deemed
to include standing timber, and the term "sale" shall
be deemed to include any disposition by way of a
license or easement, or the grant of any right of taking 25
any profits or produce from land.

Repeals.
See Reprint
of Statutes,
Vol. VII, p. 349

(3) This section is in substitution for section four
of the Land and Income Tax Amendment Act, 1930,
and that section and section four of the Land and
Income Tax Amendment Act, 1931, are hereby 30
accordingly repealed.

1938, No. 7

(4) Section one hundred and twenty-seven of the
Social Security Act, 1938, is hereby consequentially
amended as from the first day of April, nineteen 35
hundred and forty, by omitting from subsection one
the words "and in subsection two of section four of
the Land and Income Tax Amendment Act, 1930".

Allowance may
be made for
expenditure
incurred in
borrowing
money or
obtaining lease.

15. Notwithstanding anything to the contrary in
section eighty of the principal Act, the Commissioner
may, in calculating the assessable income of any 40
taxpayer, allow such deduction as he thinks fit in
respect of expenditure incurred by the taxpayer during
the income year for the preparation, stamping, and

registration of any lease of property used in the production of his assessable income, or of any renewal of any such lease, or in the borrowing of money employed by the taxpayer as capital in the production of assessable income.

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16. (1) For the purposes of this section the term “trading stock” includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale, or exchange; and also
- 10 includes live-stock; but does not include land.
- (2) Where any taxpayer carries on any business the value of his trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not he has derived assessable
- 15 income during that year.
- (3) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year:
- 20 Provided that where the taxpayer’s business is commenced and his trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price:
- 25 Provided also that the value of any trading stock at the beginning of the income year commencing on the first day of April, nineteen hundred and thirty-nine, shall be the sum accepted by the Commissioner for the purpose of computing the taxpayer’s assessable income
- 30 for the income year ended on the thirty-first day of March, nineteen hundred and thirty-nine, as being the value thereof at the end of that income year, whether or not that value is the same as the value thereof determined in accordance with the *next succeeding*
- 35 subsection.
- (4) Subject to the provisions of subsection *nine* of this section, the value of the trading stock of any taxpayer to be taken into account at the end of any income year shall be, at the option of the taxpayer, its
- 40 cost price, its market selling value, or the price at which it can be replaced.

Valuation of trading stock, including live-stock.

(5) Where the value of the trading stock of any taxpayer at the end of the income year exceeds the value of his trading stock at the beginning of that year the amount of the excess shall be included in his assessable income for that year. 5

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year. 10

(7) Where in any income year the whole or any part of the assets of a business carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange, or gift, or distribution in terms of a will, or on an intestacy, or otherwise howsoever, and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part thereof), and the assets sold or otherwise disposed of consist of or include any trading stock, the consideration received or receivable for the trading stock or (in any case where section five of the Land and Income Tax Amendment Act, 1926, applies) the price which under that section the trading stock is deemed to have realized shall be included in the taxpayer's assessable income for that year, and the person acquiring the trading stock shall, for the purpose of computing his assessable income for that year or for any subsequent income year, be deemed to have purchased it at the amount of that consideration or price. 15
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(8) Subject to the provisions of section five of the Land and Income Tax Amendment Act, 1926, the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock. 35

(9) Notwithstanding anything to the contrary in subsection *four* of this section, any taxpayer who derives income from live-stock may with the concurrence of the Commissioner adopt and fix a standard value in respect 40

of that live-stock or in respect of any class of such live-stock. In any case where a standard value has been so fixed the taxpayer may adopt or the Commissioner may require the adoption of the true value instead of the
5 standard value, or the taxpayer may, with the concurrence of the Commissioner, adopt another standard value instead of the standard value fixed as aforesaid :

Provided that the adoption of a standard value, or the adoption of the true value instead of a standard value,
10 or any alteration in the standard value as herein provided shall first take effect at the end and for the purposes of the income year or other period to which any return of assessable income relates.

(10) Section thirteen of the Land and Income Tax
15 Amendment Act, 1929, is hereby repealed.

Repeal.

See Reprint
of Statutes,
Vol. VII, p. 347

17. (1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating his assessable income for any income year, and subsequently the liability of the taxpayer in respect
20 of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted, and the taxpayer shall be assessable and liable for income-tax accordingly.

Amounts
remitted to
be taken into
account in
computing
taxpayer's
income.

25 (2) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating for the purposes of section eighty-one of the principal Act the amount of any loss incurred by him in any income year, and subsequently (whether
30 before or after the passing of this Act) the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under the said section eighty-one shall be deemed to be reduced by the amount
35 so remitted.

(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully
40 adequate consideration in money or money's worth.

(4) Section seventeen of the Finance Act, 1939, is hereby repealed.

Repeal.

1939, No. 3

Non-assessable income from other British dominions to be taken into account.

See Reprint of Statutes, Vol. VII, p. 353

Repeal.

1932, No. 30

Provisions as to carrying forward of losses by companies amended.

1936, No. 34

Section 98 of principal Act (as to joint assessment of connected companies) amended.

Defining when a company is under the control of any persons.

18. (1) Section six of the Land and Income Tax Amendment Act, 1931, is hereby amended by adding to subsection two the following paragraph:—

“(d) Income that is exempted from income-tax under section eighty-nine of the principal Act.”

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(2) This section is in substitution for section thirteen of the Finance Act, 1932 (No. 2), and that section is hereby accordingly repealed.

19. Section eighty-one of the principal Act is hereby amended by adding to subsection four (as set out in section nine of the Land and Income Tax Amendment Act, 1936) the words “and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.”

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20. Section ninety-eight of the principal Act is hereby amended by omitting from subsection one the words “of those companies is not *bona fide* for the purpose of more effectively carrying out their objects, but is”, and substituting the words “or the separate continuance of those companies is not exclusively for the purpose of more effectively carrying out their objects, but is wholly or partly”.

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21. (1) For the purposes of the principal Act a company shall be deemed to be under the control of the persons by whom or by whose nominees more than one-half of the shares or more than one-half of the voting-power is held, or who have by any other means whatsoever control of the company.

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(2) In this section the term “nominee,” in relation to any person, means any other person who may be required to exercise his voting-power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relative of that person by blood, marriage, or adoption.

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22. (1) For the purposes of the principal Act the expression "dividends", in relation to any company, shall be deemed to include—

Extending meaning of expression "dividends."

- 5 (a) All sums distributed in any manner and under any name among all or any of the shareholders of the company :
- 10 (b) Any credit given by the company without fully adequate consideration in money or money's worth to any of its shareholders in respect of the amount unpaid on any shares that are not fully paid up :
- (c) The value of any shares allotted by the company to any of its shareholders as such :
- 15 (d) The value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such :
- 20 (e) All amounts received by any shareholder in respect of his shares (whether in money or money's worth) upon the winding-up of the company in excess of the amount paid up on his shares,—
- 25 and, subject to the taxpayer's right of objection to the Commissioner's assessment in accordance with the provisions of Part III of the principal Act, shall also include any moneys advanced by the company to or for the benefit of any of its shareholders if, in the opinion of the Commissioner, the making of the advance was not a *bona fide* investment by the company but was virtually a distribution of profits, but shall not in any case include any payment or other transaction which, in the opinion
- 30 of the Commissioner, is or is equivalent to a return of share capital :

35 Provided that where any moneys advanced by a company to or for the benefit of any shareholder and deemed by virtue of this section to constitute a dividend are subsequently repaid to the company, the Commissioner may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder during the income year in which the advance was made, and may at any time

40 refund any tax found to have been paid in excess of the

amount properly payable, notwithstanding anything to the contrary in section one hundred and sixty-eight of the principal Act.

Repeal.
1935, No. 32

(2) This section is in substitution for section five of the Land and Income Tax Amendment Act, 1935, and that section is hereby accordingly repealed. 5

Income of
proprietary
company in
certain cases
assessable as
income of
shareholders.

23. (1) The following provisions shall apply for the purposes of this section, namely :—

- (a) The term “proprietary company” means in respect of any income year a company which at the end of that year is under the control of not more than *four* persons. For the purposes of this paragraph all the members of any partnership shall be deemed to be one person and all the persons interested in the estate of any deceased person (whether as trustees or as beneficiaries) shall be deemed to be one person : 10 15
- (b) The term “shareholder,” in respect of any income year, means a person by whom or on whose behalf shares in a proprietary company are held at the end of that year ; and includes a debenture-holder : 20
- (c) The term “debenture-holder,” in respect of any income year, means a person who at the end of that year holds debentures (being debentures of the kind referred to in section one hundred and seventeen of the principal Act) issued by a proprietary company ; and includes any person on whose behalf any such debentures are held at the end of the income year : 25 30
- (d) The term “non-assessable income” means non-assessable income to which section six of the Land and Income Tax Amendment Act, 1931, applies : 30
- (e) The term “ordinary proprietary company” means a proprietary company the issued capital of which consists wholly of ordinary shares each of which has the same nominal value and is paid up to the same extent as and ranks in all respects equally with every other share, and which is not a company that has issued debentures of the kind referred to in section one hundred and seventeen of the principal Act : 35 40

See Reprint of
Statutes,
Vol. VII, p. 353

- (f) The term "total income" means taxable income and non-assessable income :
- 5 (g) The total income derived in any income year by a proprietary company shall be deemed to be income derived in that year from the company by the shareholders of the company. In the case of an ordinary proprietary company the total income shall be deemed to be derived by the shareholders in the proportions which the numbers of shares held by or on behalf of the shareholders respectively bear to the total number of shares issued by the company. In the case of a proprietary company other than an ordinary proprietary company the total income shall be deemed to be derived by the shareholders in proportions determined in such manner as may be prescribed by regulations made under the principal Act, or, in default of any such regulations or so far as they do not extend, in such proportions as the Commissioner thinks just and reasonable, having regard to the nature and relative importance of the interests of the shareholders in the company :
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- 25 (h) All shares or debentures held by or on behalf of a married woman living with her husband within the meaning of section *thirteen* of this Act shall be deemed to be held by her husband :
- 30 (i) The term "proprietary income" means the income deemed under paragraph (g) of this subsection to have been derived by a shareholder from a proprietary company in any income year in every case where that income is not less than one-fifth of the total income of the company for that year. The proprietary income derived by a shareholder from any proprietary company in any income year shall be deemed to consist of assessable and non-assessable income in the proportions in which the total income of the company for that year consists of taxable and non-assessable income ; and
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that portion of any proprietary income that is deemed to be assessable income shall, if derived from an investment company, be deemed to be unearned income of the shareholder, and in all other cases shall be deemed to be earned income of the shareholder : 5

(j) The term "investment company" means a proprietary company the taxable income of which is derived exclusively or principally from sources of such a nature that, if income were derived therefrom by a person other than a company or a public or local authority, that income would be unearned income. 10

(2) The proprietary income derived by any shareholder in any income year shall be included in his assessable or (as the case may require) his non-assessable income for that year, and he shall be assessable and liable for income-tax accordingly. 15

(3) The following provisions shall apply with respect to every assessment made under this section in respect of income derived by any shareholder during any income year :— 20

(a) Notwithstanding anything to the contrary in section six of the Land and Income Tax Amendment Act, 1931, the Commissioner shall have no regard to the dividends or interest (being interest of the kind referred to in section one hundred and seventeen of the principal Act) derived by the shareholder from any proprietary company from which he derived proprietary income during the income year : 30

(b) Notwithstanding anything to the contrary in section seventy-three of the principal Act, all deductions from the assessable income by way of special exemption shall, to the extent of the portion of the assessable income that is not proprietary income, be made from that portion, and the balance (if any) shall be deducted from the assessable proprietary income : 40

(c) Where the proprietary income of the shareholder or any portion thereof is taxable under this section and that income is also taxable in the same year of assessment as being income derived by a proprietary company, there shall be deducted from the tax payable by the shareholder in respect of that income a sum equal to the tax payable by the company in respect of that income.

(4) Nothing in the foregoing provisions of this section shall be construed to affect the assessment or liability for income-tax of any proprietary company.

24. (1) For the purposes of this section,—

“Proprietary company” has the same meaning as in the *last preceding* section :

“Relative” means a husband or wife, or a relation by blood, marriage, or adoption.

(2) Where any sum paid or credited by a proprietary company, being or purporting to be remuneration for services rendered by any person who is a shareholder or director of the company or a relative of any such shareholder or director, exceeds such amount as in the opinion of the Commissioner is reasonable, the amount of the excess shall not be an allowable deduction in computing the assessable income of the company, and shall, for the purposes of the principal Act, be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

25. (1) Where any business carried on in New Zealand—

(a) Is controlled exclusively or principally by persons not resident in New Zealand ; or

(b) Is carried on by a company not resident in New Zealand, or by a company in which more than one-half of the shares are held by persons not resident in New Zealand ; or

(c) Is carried on by a company which holds, or on behalf of which other persons hold, more than one-half of the shares in a company not resident in New Zealand,—

and it appears from the returns made to the Commissioner that the business produces no taxable income or less than the amount of taxable income which in the opinion of

Assessment of payments made to shareholders and directors of proprietary companies.

Arbitrary assessment where business controlled by non-residents appears to produce insufficient taxable income.

the Commissioner might be expected to arise from that business, the person carrying on the business in New Zealand shall, notwithstanding anything to the contrary in the principal Act, be assessable for and liable to pay income-tax on a taxable income of such amount as the Commissioner determines, being at the option of the Commissioner either such proportion as he determines of the total receipts (whether cash or credit) of the business or such proportion as he determines of the total purchase-moneys paid or payable (whether in cash or by the granting of credit) in the conduct of the business.

(2) For the purposes of this section the place of residence of any person other than a company, and the place of residence of any company, shall be determined in accordance with the provisions of section eighty-six of the principal Act.

Appointment of special committee to consider objections to arbitrary assessments of income-tax.

26. (1) There is hereby established a special committee to consider and make recommendations in accordance with this section in respect of any objection that may be received by the Commissioner on the ground that an assessment of taxable income made in respect of any taxpayer pursuant to the provisions of the *last preceding* section or any other provisions requiring or empowering the Commissioner to assess the taxpayer for income-tax upon a taxable income not being or purporting to be income in fact derived by that taxpayer, but being an income deemed for the purposes of the principal Act to have been derived by him, is in excess of the taxable income which was in fact derived by him during the income year to which the assessment relates.

(2) The aforesaid special committee shall consist of—

- (a) The Commissioner of Taxes;
- (b) The Solicitor-General; and
- (c) The Secretary to the Treasury.

(3) In the absence from any meeting of the committee of any of the aforesaid members, any officer of the Department controlled by him may, with his authority, attend the meeting in his stead, and for the purposes of that meeting shall be deemed to be a member of the committee.

(4) The committee shall consider all objections made in accordance with subsection *one* of this section, and if in any case it is of opinion that the assessment is in respect of a taxable income in excess of the taxable income in fact derived by the taxpayer during the income year to which the assessment relates, it may recommend to the Minister of Finance that the assessment be reduced by an amount specified in the recommendation.

(5) For the purpose of considering any objection under this section, the committee shall have free access to all records under the control of the Commissioner relating to the taxpayer.

(6) On receipt by the Minister of the recommendations of the committee he may refer the matter back to the committee for further consideration and recommendation, or he may authorize the Commissioner to reduce the assessment by such amount as he thinks fit, not exceeding the amount of the reduction recommended by the committee.

(7) For the purposes of the foregoing provisions of this section any recommendation made by not less than two members of the committee shall be deemed to be a recommendation of the committee.

(8) Nothing in this section shall affect the powers of the Commissioner under section seven of the Finance Act (No. 2), 1937.

1937, No. 36

27. Section one hundred and two of the principal Act is hereby amended as follows:—

Amending provisions relating to assessment of income derived by trustees.

(a) By adding to paragraph (a) the words: "Where any income is derived by a beneficiary as aforesaid subject to a condition, obligation, or trust requiring him to maintain or support any other person (whether out of the income so derived or otherwise) and that beneficiary would, apart from that condition, obligation, or trust, be entitled to a special exemption in respect of the maintenance and support provided by him for that other person, that beneficiary shall be assessed for income-tax and shall be entitled to the same special exemptions as if he were beneficially entitled to the income free from any such condition, obligation, or trust":

(b) By omitting from paragraph (b) all words after the words "shall be computed by reference to that income alone and that", and substituting the following words: "the trustee shall not be entitled to any deduction by way of special exemption: 5

"Provided that in any case where a trustee is empowered at his discretion to pay or apply income derived by him to or for the benefit of specified beneficiaries or to or for the benefit of some one or more of a number of specified beneficiaries or of a specified class of beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be entitled in possession to the receipt of the amount paid to him or applied for his benefit during the income year by the trustee in the exercise of that discretion": 10 15

(c) By adding the following paragraph:— 20

"(e) Where any company or corporation is a trustee any income assessable to the trustee under paragraph (b) of this section shall be assessable at the rate applicable to a trustee other than a company or a corporation." 25

Income received by trustee after death of deceased person.

28. It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable or (as the case may require) non-assessable income derived by the trustee in that year if it does not represent assessable or non-assessable income derived by the deceased person during his lifetime, but would have been included in his assessable or non-assessable income if he had been alive when it was received. 30 35

Assessment of income derived in trust for Natives.

29. (1) For the purposes of this section the term "Native authority" means the Board of Native Affairs, the Native Trustee, the East Coast Commissioner, a Maori Land Board, or a body corporate under Part XVII of the Native Land Act, 1931; and includes any other body, authority, or person administering or having control of Native land or reserves or any other property or income in trust for or on behalf of or for the benefit of any Natives. 40

See Reprint of Statutes, Vol. VI, p. 250

5 (2) Where in any income year a Native authority derives income (whether as trustee, agent, or otherwise) in trust for or on behalf of or for the benefit of any Native or Natives, that income shall, for the purpose of assessing income-tax thereon, be deemed to be income derived by the Native authority as trustee for the Native or Natives, and the Native authority shall be assessable and liable for income-tax accordingly; and notwithstanding anything to the contrary in section five hundred and fifty of the Native Land Act, 1931, or in any other enactment, the Native authority may pay the tax out of any income derived by it in trust for or on behalf of or for the benefit of the Native or Natives.

See Reprint of Statutes, Vol. VI, p. 346

15 (3) Where in any income year a Native authority, pursuant to any order or direction of the Native Land Court or of any Maori Land Board, or pursuant to any settlement or trust created by any Act, receives or retains any income to the receipt of which any Native or Natives would otherwise be entitled, or holds or deals with any such income on behalf of or for the benefit of any such Native or Natives, that income shall be deemed to be income derived by the Native or Natives during that income year, and the Native authority shall in respect thereof be deemed to be the agent of the Native or Natives, and shall be assessable and liable for income-tax in accordance with the provisions of paragraph (a) of section one hundred and two of the principal Act.

30 **30.** Notwithstanding anything to the contrary in the Cook Islands Act, 1915, the provisions of the principal Act, in so far as they relate to income-tax, shall apply to the Cook Islands in the same manner in all respects as if the Cook Islands were for all purposes part of New Zealand, and for the purposes of this section the term "New Zealand" as used in the principal Act shall, both in New Zealand and in the Cook Islands, be construed as including the Cook Islands accordingly.

Application of provisions relating to income-tax to Cook Islands. Ibid., Vol. II, p. 658

40 **31.** Section one hundred and thirty-six of the principal Act is hereby amended by omitting therefrom the words "in any Court of competent jurisdiction", and also by adding the following words: "Notwithstanding anything to the contrary in the Magistrates'

Section 136 of principal Act (as to recovery of tax) amended. Ibid., p. 98

Courts Act, 1928, any Court constituted under that Act shall have jurisdiction to hear and determine proceedings by the Commissioner for the recovery of tax, whatever the amount involved."

Section 80 of principal Act (as to prohibited deductions) amended.

32. (1) Section eighty of the principal Act is hereby amended by repealing paragraph (g) of subsection one (as amended by section seven of the Land and Income Tax Amendment Act, 1936), and substituting the following paragraph :— 5

1936, No. 34
Repeal.

"(g) Income-tax or Social Security Contribution." 10

(2) The said section seven of the Land and Income Tax Amendment Act, 1936, is hereby repealed.