

LAND AND INCOME TAX AMENDMENT BILL (No. 2)

EXPLANATORY NOTE

THIS Bill amends the Land and Income Tax Act 1923.

PART I

SNOW LOSS RESERVES

Part I provides that a farmer may make deposits with the Commissioner of Inland Revenue to provide a reserve for making good any losses of livestock or income resulting from snow. The deposits are to be deducted from the farmer's assessable income for the year in which the deposits are made or deemed to be made, and are to be added to his assessable income for the year in which they are refunded for the purpose of making good any snow losses, except to the extent to which they are allocated to the next year by the Snow Loss Reserve Committee which is to be set up to approve refunds for the purpose of making good snow losses. The farmer may take a refund of any deposit at any time for any other purpose, and in that case the amount of the refund is to be added to the assessable income for the year in which the deposit was made, and the tax for that year is to be reassessed accordingly.

The following notes set out the effect of each clause of Part I.

Clause 2: Interpretation.

Clause 3 provides that a farmer may make deposits with the Commissioner of such amounts as he thinks fit, but so that no payment is less than £250 and the total amount deposited by any taxpayer does not exceed his maximum reserve, which is defined as being an amount calculated at the rate of £1 for each head of sheep and £5 for each head of cattle normally depastured on the part of the farming land that is subject to snow losses. Every amount received by the Commissioner is to be entered in a snow loss reserve account kept by the Commissioner in the name of the taxpayer. No interest is to be allowed on any amount in a reserve account.

Clause 4 provides that the money in a taxpayer's reserve account is not to be alienated or charged or to be available on bankruptcy or to pay his debts, until it has been refunded in accordance with the Bill.

Clause 5 provides that every deposit is to be allowed as a deduction from the taxpayer's assessable income for the year in which the deposit is made. The taxpayer may, if he thinks fit, require any deposit made within three months after the passing of the Bill to be allocated to the income year that ended on 31 March 1953, or require any deposit made within six months after the end of an income year to be allocated to that year.

Clause 6 provides that a taxpayer who suffers a loss of livestock or income as a result of snow may apply to the Snow Loss Reserve Committee for a refund from his reserve account of such amount as he considers necessary to make good the loss. Application is to be made within six months after the end of the income year in which the loss occurred, unless the Committee extends the time. After considering an application the Committee is to determine the amount of the refund to be made, and is to allocate that amount to the income year in which the loss occurred or the next year, or partly to one year and partly to the other. No refund is to be less than £500 or the balance in the taxpayer's reserve account, whichever is the less. Every amount refunded under this clause is to be treated as assessable income of the taxpayer for the year to which it is allocated by the Committee.

Clause 7 provides that a taxpayer may apply to the Commissioner for a refund from his reserve account for any purpose other than to make good a snow loss. Such refunds are not to be made of any amount that has been deposited for less than twelve months, unless the Commissioner otherwise determines. The amount of any such refund must not be less than £500 or the available balance in the reserve account, whichever is the less. Every amount refunded under this section is to be added to the taxpayer's assessable income for the income year in which the deposit was allowed as a deduction under *clause 5*, and the additional amount of income tax and social security charge thereby made payable (referred to as the contingent tax) is to be deducted from the amount of the refund. The taxpayer is to receive notice of the amount of his deposit and of the contingent tax with his assessment of tax for the year in which the deposit is made.

Clause 8 provides that refunds are to be made without appropriation by Parliament, out of the deposits in the order in which they were made, and that an amended notice of the balance of the deposits and the contingent tax thereon is to be given to the taxpayer after every refund.

Clause 9 establishes the Snow Loss Reserve Committee, to consist of a public accountant as Chairman, a member of the High Country Committee of Federated Farmers of New Zealand (Incorporated), and an officer of the Inland Revenue Department. The members are to be appointed by the Governor-General and to hold office during his pleasure. The clause also provides for the procedure and powers of the Committee, and for the remuneration and travelling allowances of the non-official members.

PART II

GENERAL

This Part makes miscellaneous amendments to the principal Act.

Clause 10: This Part is to apply to the current year of assessment that commenced on 1 April 1953 and all future years, except as provided in *clauses 11 and 14*.

Clause 11 inserts a new paragraph (*ff*) in section 79 of the principal Act to define the classes of payments that are included in assessable income as royalties, so as to include all classes of royalties and not only those in respect of land.

Clause 12 limits the operation of section 16 of the Land and Income Tax Amendment Act 1951 by excluding bona fide contracts of employment or partnership. Section 16 relates to contracts of employment or partnership under which a relative of a taxpayer is entitled to a salary or share of profits

that is deemed by the Commissioner to be excessive. This clause provides that section 16 is not to apply to bona fide contracts, which are defined as written contracts signed by the parties (all being over the age of twenty-one years) and binding for not less than three years, each party having real and effective control over his remuneration or share of profits, and the remuneration or share of profits of any party who is a relative not being of such an amount as to constitute a gift.

Clause 13 provides that where a debt is written off as irrecoverable by the trustee of the estate of a deceased taxpayer, and has previously been included in the assessable income of the deceased or his estate, the amount written off shall be allowed as a deductible loss in assessing the income of the estate. If necessary the deduction may be spread over six income years, and in each year the deduction is to be made first from the trustee's income and then, if necessary, from the income of a beneficiary affected by the loss.

Clause 14 provides that a mining company that has ceased to have mining as its principal source of income as defined in section 97 of the principal Act is to continue to be assessed for income tax under that section by reference to its dividends. This clause is to come into force as from 1 April 1951.

Clause 15 provides that two or more trusts in favour of the same beneficiaries are to be treated as a single trust if they are created by the same person or if the whole or substantially the whole of the trust property has been received from the same person.

Clause 16 re-enacts the provision defining when a company is deemed to be under the control of any persons. The new parts of the clause are marked by black type or a rule in the margin. The clause is extended to cover cases where control is exercised by the ownership of more than one-half of the nominal capital or paid up capital or by a right to more than one-half of the profits.

Clause 17 enables the Commissioner to determine in his discretion that distributions by a company in restoration of capital previously lost and written off are not to be deemed to be dividends.

Clause 18 re-enacts the provisions under which the income of proprietary companies is in certain cases assessable as income of the shareholders. The new provisions are marked by black type or a rule in the margin. Paragraphs (b) and (c) of subclause (1), defining the terms "shareholder" and "debenture holder", are extended so as to apply to cases where a company is wound up during an income year. In paragraph (f) a new proviso provides that in computing the residual taxable income of a proprietary company allowance is to be made for social security charge payable on the taxable proprietary income of the company as well as the charge on its other chargeable income. In paragraph (i) the definition of "proprietary income" is extended by providing that all income deemed under the clause to be derived by a shareholder is to be taken into account in determining whether his proprietary income is not less than one-fourth of the total income of the company. In the present section the proportion is one-fifth. New definitions of "proprietary assessment" and "non-proprietary assessment" are inserted in paragraphs (j) and (k). Paragraph (n) is a new provision to cover cases where a group of companies is so interlocked that two companies each derive proprietary income from the other, and it is accordingly necessary for the Commissioner to decide which is to be treated as the proprietary company.

Subclause (2) is altered so as to provide that a taxpayer is to be assessed in a proprietary assessment (including his proprietary income) or in a non-proprietary assessment excluding his proprietary income, whichever produces the greater amount of tax.

Subclause (6) is altered so as to provide that certain non-assessable dividends and interest are to be excluded only from proprietary assessments, but will be included in non-proprietary assessments.

Subclauses (7), (8), and (9) are new. They provide for the removal by way of appropriate rebate of the element of double taxation which may be brought about by the inclusion of one amount of company income as proprietary income in one year and as dividends in a subsequent year.

Hon. Mr Bowden

LAND AND INCOME TAX AMENDMENT (No. 2)

ANALYSIS

Title.		
1. Short Title.		11. Royalties to be assessable income.
PART I		
SNOW LOSS RESERVES		
2. Interpretation.		12. Bona fide contracts of employment or partnership with relative of taxpayer.
3. Snow loss reserve deposits.		13. Deduction from estate income of irrecoverable book debts of deceased taxpayer.
4. Deposits not alienable.		14. Mining companies to be subject to section 97 of principal Act after ceasing mining operations.
5. Deposits to be deducted from assessable income.		15. Separate trusts to be treated as one trust in certain cases.
6. Refunds to make good snow losses.		16. Defining when a company is under the control of any persons.
7. Refunds for other purposes.		17. Limiting meaning of expression "dividends".
8. General provisions as to refunds.		18. Income of proprietary company in certain cases assessable as income of shareholders.
9. Snow Loss Reserve Committee.		
PART II		
GENERAL		
10. Application of this Part.		

A BILL INTITULED

AN ACT to amend the Land and Income Tax Act 1923. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority

5 of the same, as follows:

1. This Act may be cited as the Land and Income Tax Amendment Act (No. 2) 1953, and shall be read

together with and deemed part of the Land and Income Tax Act 1923 (hereinafter referred to as the principal

10 Act).

Short Title.
See Reprint
of Statutes,
Vol. VII, p. 271

PART I

SNOW LOSS RESERVES

Interpretation.

2. For the purposes of this Part of this Act, unless the context otherwise requires,—

“Affected area” means that portion of the land 5
used in any farming business that is subject
to snow to such an extent that there is a risk
of the loss of livestock or income:

“Committee” means the Snow Loss Reserve
Committee established under this Part of this 10
Act:

“Maximum reserve”, in relation to any taxpayer,
means an amount calculated at the rate of one
pound for each head of sheep and five pounds
for each head of cattle normally depastured 15
on the affected area of the land used in the
taxpayer’s farming business:

“Public accountant” means a member of the New
Zealand Society of Accountants who is regis- 20
tered as a public accountant under the New
Zealand Society of Accountants Act 1908:

“Reserve deposit”, in relation to any taxpayer,
means the total amount deposited by him in
his snow loss reserve account in any income 25
year:

“Snow loss reserve account” or “reserve account”,
in relation to any taxpayer, means a snow loss
reserve account kept in his name by the
Commissioner.

See Reprint
of Statutes,
Vol. I, p. 4

Snow loss
reserve
deposits.

3. (1) Subject to the provisions of this section, any 30
taxpayer who is carrying on a farming business on land
that comprises or includes an affected area may from
time to time during any income year pay to the Com-
missioner such amounts as the taxpayer thinks fit by
way of a snow loss reserve deposit for that income year. 35

(2) Every amount received by the Commissioner
from any taxpayer in accordance with this section shall
be paid into the Public Account to the credit of the
Deposits Account, and shall be entered in a snow loss
reserve account to be kept by the Commissioner in the 40
name of the taxpayer. No other amounts shall be

entered in the taxpayer's reserve account. No amount entered in any such reserve account shall be paid to any person except by way of refund as provided in this Part of this Act.

5 (3) No interest shall be payable in respect of the money in any snow loss reserve account.

(4) The balance in any taxpayer's reserve account (being the total amount entered therein and not refunded) shall not at any time exceed his maximum
10 reserve.

(5) No amount shall be received from any taxpayer under this section which is—

(a) Less than two hundred and fifty pounds or the amount that will increase the balance in his
15 reserve account to his maximum reserve, whichever amount is the smaller; or

(b) Greater than the amount that will increase the balance in his reserve account to his maximum reserve.

20 **4.** No amount entered in any taxpayer's reserve account shall be in any way assigned or charged or pass Deposits not alienable.
to any other person by operation of law, or be assets for the payment of the taxpayer's debts or liabilities or (in the event of his death) of the debts or liabilities of
25 his estate, at any time before they have been duly refunded in accordance with this Part of this Act.

5. (1) Where any taxpayer makes a deposit under this Part of this Act in any income year in respect of his farming business, the Commissioner shall allow the
30 amount of that deposit as a deduction in calculating the assessable income derived by the taxpayer from that business for that year. Deposits to be deducted from assessable income.

(2) For the purposes of this section, if any taxpayer at the time of making a deposit notifies the Commissioner
35 in writing that he desires the deposit to be so allocated,—

(a) Any deposit made within three months after the passing of this Act shall be deemed to have been made during the income year that ended or is deemed to have ended on the thirty-first
40 day of March, nineteen hundred and fifty-three:

(b) Any deposit made within six months after the end of any income year shall be deemed to have been made during that income year.

Refunds to
make good
snow losses.

6. (1) If a taxpayer who has made a deposit suffers a loss of livestock or income as a result of snow he may apply to the Snow Loss Reserve Committee for a refund from his reserve account of such amount as he considers necessary to make good the loss. 5

(2) Every such application shall be made in writing addressed to the Committee at the office of the District Commissioner of Taxes within six months after the end of the income year in which the loss occurred or within such extended time as the Committee may in any case allow, and shall be supported by such evidence as the Committee may require as to the nature and extent of the loss. 10

(3) The Committee shall consider every application made under this section and shall in each case— 15

(a) Determine the amount of the refund to be made, having regard to the nature and extent of the loss and to all other relevant considerations; and

(b) Allocate the amount of the refund to the income year in which the loss occurred or to the next following income year, or partly to one of those years and partly to the other: 20

Provided that no refund shall be less than five hundred pounds or the balance in the taxpayer's reserve account, whichever amount is the smaller. 25

(4) Every amount refunded under this section shall be deemed to be assessable income derived by the taxpayer in the income year to which it is allocated by the Committee. 30

Refunds for
other purposes.

7. (1) Subject to the provisions of this section, any taxpayer may at any time apply to the Commissioner for a refund of the whole or any part of the balance in his reserve account for any purpose other than to make good a loss of livestock or income resulting from snow. 35

(2) No refund shall be made under this section of any amount that has been deposited less than twelve months before the date of the application, unless the Commissioner in any case otherwise determines.

(3) No refund under this section shall be less than five hundred pounds or the balance in the taxpayer's reserve account available for refund, whichever amount is the smaller.

5 (4) Where the whole or any part of a reserve deposit is refunded under this section, the amount so refunded shall be deemed to be assessable income derived by the taxpayer in the income year in which that deposit was allowed as a deduction under section *five* of this Act,
10 and the income tax and social security charge payable in respect of that income year shall, notwithstanding anything to the contrary in section sixteen of the principal Act, be assessed accordingly. The additional tax and charge payable under any such assessment shall
15 be deemed to be the tax and charge payable in respect of the amount refunded, and is hereinafter referred to as the contingent tax. The amount of the contingent tax shall be deducted from the amount of the refund, and notice shall be given to the taxpayer of the amount
20 of the contingent tax so assessed and deducted.

(5) The amount of the contingent tax that will be payable in the event of a reserve deposit being refunded under this section shall be computed when the income tax is being assessed in respect of the income year in
25 which the deposit was allowed as a deduction, and notice of the amount of the reserve deposit and of the amount of the contingent tax that will be payable in the event of that reserve deposit being so refunded shall be issued with the notice of assessment of income
30 tax in respect of that income year.

8. (1) All refunds made under this Part of this Act shall be paid out of the Deposits Account without further appropriation than this section. General provisions as to refunds.

(2) Every such refund made to any taxpayer shall
35 be deemed to have been made from his reserve deposits in the order in which those deposits were made.

(3) Where any such refund is made to any taxpayer and any amount remains in his snow loss reserve account, the contingent tax shall be recomputed and notice shall
40 be given to the taxpayer of the amount of each reserve deposit remaining in the reserve account and of the contingent tax in respect of each such deposit.

Snow Loss
Reserve
Committee.

9. (1) For the purposes of this Part of this Act there is hereby established a Committee to be called the Snow Loss Reserve Committee.

(2) The Committee shall consist of three persons to be appointed by the Governor-General to hold office 5 during his pleasure, of whom—

(a) One shall be a public accountant, who shall be the Chairman of the Committee:

(b) One shall be a member of the High Country Committee of Federated Farmers of New 10 Zealand (Incorporated):

(c) One shall be an officer of the Inland Revenue Department.

(3) In the event of the illness, absence, or other incapacity of the Chairman or of any other member of 15 the Committee, the Governor-General may appoint any qualified person to act in the place of the Chairman or member during his incapacity.

(4) The decision of a majority of the members of the Committee on any matter shall be the decision of 20 the Committee.

See Reprint
of Statutes,
Vol. I, p. 1036

(5) The Committee shall within the scope of its jurisdiction be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Part of this Act, all the pro- 25 visions of that Act, except sections eleven and twelve (which relate to costs), shall apply accordingly.

(6) For the purpose of considering any application for a refund made by or on behalf of any taxpayer under this Part of this Act or any matter relevant thereto, 30 the Committee shall have free access to all records under the control of the Commissioner relating to that taxpayer.

(7) The Committee may admit and accept such evidence as it thinks fit, whether admissible in a Court 35 of law or not, and, if it thinks fit, may determine any application or any matter relevant thereto upon written representations without hearing any person.

(8) Subject to this section, the procedure of the Committee shall be such as the Committee thinks fit. 40

(9) Every decision of the Committee shall be final.

(10) There shall be paid out of money appropriated by Parliament for the purpose to the members of the Committee (other than the officer of the Inland Revenue Department) remuneration by way of fees, salary, 5 or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if those members were members of a statutory Board within the meaning of that Act. 1951, No. 79

10

PART II

GENERAL

10. Except as otherwise provided herein, this Part of this Act shall apply with respect to the tax for the year of assessment that commenced on the first day of 15 April, nineteen hundred and fifty-three, and for every subsequent year. **Application of this Part.**

11. (1) Section seventy-nine of the principal Act is hereby amended by inserting, after paragraph (f), the following paragraph: **Royalties to be assessable income.**

20 “(ff) All royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property:”.

25 (2) Section seventy-nine of the principal Act is hereby further amended by omitting from paragraph (f) the word “royalties”.

30 (3) This section shall apply with respect to the tax for the year of assessment commencing on the first day of April, nineteen hundred and fifty-four, and for every subsequent year.

12. Section sixteen of the Land and Income Tax Amendment Act 1951 is hereby amended by adding the following subsection: **Bona fide contracts of employment or partnership with relative of taxpayer. 1951, No. 80**

35 “(6) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following 40 conditions:

(a) The contract is in writing or by deed signed by all the parties thereto;

- (b) No partner and no person employed or engaged under the contract was under the age of twenty-one years at the date on which the contract was signed:
- (c) The contract is binding on the parties thereto for a term of not less than three years and is not capable of being terminated by any party thereto before the expiry of that term except for the reasons specified in sections thirty-six and thirty-eight of the Partnership Act 1908: 5
- (d) Each party to the contract has real and effective control of the remuneration, salary, share of profits, or other income to which he is entitled under the contract: 15
- (e) The remuneration, salary, share of profits, or other income payable to a relative, or to a company a director or shareholder of which is a relative, is not of such an amount that the transaction constitutes in whole or in part a gift for the purposes of the Death Duties Act 1921. 20

See Reprint of Statutes, Vol. VI, p. 628

Ibid., Vol. VII, p. 354

Deduction from estate income of irrecoverable book debts of deceased taxpayer.

13. Where the amount of any debt owing to a deceased taxpayer at the date of his death has been included in the assessable income of the taxpayer or of the trustee of his estate for any income year, and the debt or any part of it is proved to the satisfaction of the Commissioner to be irrecoverable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction, first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt thereof under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively during each of the next six following years. 25 30 35 40

14. (1) Where section ninety-seven of the principal Act applies to any company at any time after the date of the commencement of this section, that section shall continue to apply to the company, notwithstanding that 5 the company may cease at any time after that date to have as its sole or principal source of income the business of mining as specified in that section.

Mining companies to be subject to section 97 of principal Act after ceasing mining operations.

(2) This section shall be deemed to have come into force on the first day of April, nineteen hundred and 10 fifty-one.

15. Section one hundred and two of the principal Act (as amended by section twenty-seven of the Land and Income Tax Amendment Act 1939) is hereby further amended by adding the following paragraph:

Separate trusts to be treated as one trust in certain cases. 1939, No. 34

15 “(f) Where two or more trusts have been created by the same person, or the whole or substantially the whole of the property subject to two or more trusts has been received from the same person, and the terms of the 20 separate trusts are such that the income of the trusts is derived by or will ultimately be derived by or accrue to the same beneficiary or beneficiaries or the same group or class of beneficiaries, whether the separate trusts are 25 administered by the same or different trustees, then, for the purposes of this section, the separate trusts shall be deemed to be one trust of which the income is the total income of the separate trusts and of 30 which the trustees are all the trustees of the separate trusts.”

16. (1) For the purposes of the principal Act a company shall be deemed to be under the control of the persons—

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

35 (a) By whom more than one-half of the shares, or **more than one-half of the nominal capital, or more than one-half of the paid up capital**, or more than one-half of the voting power is held; or

40 (b) Who have by any other means whatsoever control of the company; or

(c) Who, by reason of the shareholding at the end of any income year, would be entitled to more than one-half of the profits for that year if those profits were distributed by way of dividend at the end of that year. 5

(2) For the purposes of paragraph (a) of subsection one of section *eighteen* of this Act, where a company is not under the control of any one person the company shall be deemed to be under the control of not more than four persons if there is any one group of persons not exceeding four in number **who are deemed to have control of the company by virtue of subsection one of this section**, notwithstanding that there may also be another group of persons not exceeding four in number **who are deemed to have control of the company by virtue of subsection one of this section**, or that there may be two or more such other groups. 10 15

(3) Where a nominee of any person holds any shares, **nominal capital, paid up capital**, or voting power in a company, or has by any other means whatsoever any power of control in a company, **or is entitled to a share of profits distributed by a company**, then for the purposes of this section those shares **or that capital** or that voting power or that power of control **or that title to profits**, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee or that person and all his nominees shall be deemed to be one person. 20 25

(4) In this section—

“Person” includes a company and a local or public authority: 30

“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. 35 40

(5) This section is in substitution for section twenty-one of the Land and Income Tax Amendment Act 1939 (as amended by section three of the Land and Income Tax Amendment Act 1949), and those sections are hereby accordingly repealed.

17. Section twenty-two of the Land and Income Tax Amendment Act 1939 is hereby amended by inserting, after subsection one, the following subsection:

“(1A) Where any company that has reduced the amount of the paid up capital of any shareholder by writing off losses incurred by the company—

“(a) Subsequently gives credit without fully adequate consideration in money or money’s worth to that shareholder in respect of the amount unpaid on any shares in the company; or

“(b) Subsequently allots shares to that shareholder the paid up value of which shares exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholder to the company for the shares—

the expression “dividends” shall, for the purposes of the principal Act, be deemed not to include the credit so given or the paid up value of the shares so allotted, as the case may be, to the extent that the Commissioner thinks just and reasonable, having regard to the amount of the paid up capital lost by the shareholder and any other relevant considerations.”

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

(a) The term “proprietary company”, in relation to any income year, means a company which at the end of that year is under the control of not more than four persons, or a company which at the end of that year is being or has been wound up and was at the commencement of the winding up 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:

1939, No. 34
1949, No. 29
Limiting meaning of expression “dividends”.
1939, No. 34

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

- (b) The term "shareholder", in relation to any company and any income year, means a person by whom or on whose behalf shares in the company are held at the end of that year **or, as the case may be, at the date of the final distribution of the assets of the company during that year;** and includes a debenture holder: 5
- (c) The term "debenture holder", in relation to any company and any income year, means a person by whom or on whose behalf debentures issued by the company (being debentures of the kind referred to in section one hundred and seventeen of the principal Act) are held at the end of that year **or, as the case may be, at the date of the final distribution of the assets of the company during that year:** 10 15
- (d) 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: 20 25
- (e) The term "non-assessable income" means non-assessable income to which section six of the Land and Income Tax Amendment Act 1931 applies; **and includes non-assessable proprietary income:** 30
- (f) The term "residual taxable income", in relation to any proprietary company and any income year, means the amount by which the taxable income of the company for that year (**including taxable proprietary income**) exceeds the total amount of the income tax and social security charge payable by the company in respect of income derived by it during that year: 35 40

5 Provided that, for the purposes of this paragraph, the social security charge payable by the company shall be calculated as if social security charge were payable by the company not only on income of the company which is chargeable under the Social Security Act 1938 but also on the taxable proprietary income derived by it from any other company during that year: 1938, No. 7

10 Provided also that in the application of this section to any shareholder that is a company the residual taxable income of the proprietary company for any income year shall be deemed to be the amount of the taxable income of the proprietary company for that year:

15 (g) The term "total income", in relation to any proprietary company and any income year, means the total amount of the residual taxable income and non-assessable income of the company for that year:

20 (h) 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:

25

30

35

40

- (i) The term “proprietary income”, in relation to any shareholder in any proprietary company and any income year, means the income deemed under **this subsection** to have been derived by the shareholder from the company in that year in every case where that income **(together with any other income deemed under this section to have been derived by that shareholder in that year)** is not less than **one-fourth** 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 residual taxable income and non-assessable income: 5
- (j) The term “proprietary assessment”, in relation to any taxpayer and any income year, means an assessment which includes, in addition to any other income, the whole of the proprietary income derived by the taxpayer in that year: 10
- (k) The term “non-proprietary assessment”, in relation to any taxpayer and any income year, means an assessment which does not include any of the proprietary income which the taxpayer has derived in that year: 15
- (l) Where pursuant to section ninety-eight of the principal Act the Commissioner treats as a single company two or more companies any one or more of which hold shares in another company, the companies so treated as a single company shall be deemed to be one shareholder of that other company, and, for the purpose of paragraph (a) of subsection one of this section, to be one person: 20 25 30
- (m) Where two or more companies (in this paragraph referred to as the holding companies) which are under the control of the same persons hold such shares or debentures in any other company that if the holding companies were a single company the other company 35 40

would be a proprietary company from which that single company would derive proprietary income, the other company shall be deemed to be a proprietary company and the income derived therefrom by the holding companies shall be deemed to be proprietary income of the holding companies:

5

(n) Where a proprietary company derives proprietary income, either directly or through any intermediate proprietary company or companies, from another proprietary company, and that other proprietary company also derives proprietary income from the proprietary company first mentioned, whether directly or through any intermediate proprietary company or companies, the Commissioner may, notwithstanding anything in paragraph (g) of this subsection, exclude from the total income of any of the proprietary companies concerned such portion of the proprietary income derived by that company as he determines and may allocate to the shareholders of that company such portion of the total income derived by that company as he thinks just and reasonable, having regard to the nature and relative importance of the interests of the shareholders in that company.

10

15

20

25

(2) The proprietary income derived by any shareholder in any income year shall be deemed to be assessable income or (as the case may require) non-assessable income for that year, and, where a proprietary assessment is made, shall be included in that assessment accordingly. The tax payable for any year by any shareholder shall be either—

30

35

(a) The tax assessed for that year in a proprietary assessment made on the shareholder, after making the deduction provided for by paragraph (c) of subsection *three* of this section; or

40

(b) The tax assessed for that year in a non-proprietary assessment made on the shareholder,—

whichever amount of tax is the greater, and the shareholder shall be assessable and liable for tax accordingly.

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

(a) No portion of any loss incurred by any taxpayer (being a loss of the kind referred to in section eighty-one of the principal Act) shall be deducted from or set off against his proprietary income: 5

(b) 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: 10 15

(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 a sum equal to the income tax payable by the company in respect of that income. 20

(4) The assessment of any shareholder of a proprietary company in accordance with the provisions of this section shall not affect the assessment or liability for tax of that proprietary company. 25

(5) Nothing in the provisions of this section shall be construed to affect the assessment or liability of any shareholder for social security charge. 30

(6) Notwithstanding the provisions of section six of the Land and Income Tax Amendment Act 1931, no dividends or interest derived by a shareholder from a proprietary company in any income year (the interest being interest of the kind referred to in section one hundred and seventeen of the principal Act) shall be included in a proprietary assessment that includes proprietary income derived by the shareholder from that company. 35 40

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

5 (7) Where an assessment made in respect of the
income derived by any taxpayer in any income year
includes a dividend from a company from which the
taxpayer has derived proprietary income during one or
10 more of the four income years immediately preceding
that income year, there shall be deducted by way of
rebate in calculating the tax payable the additional tax
payable under a proprietary assessment made in respect
of income derived by the taxpayer in any one or more
15 of those four immediately preceding income years, to
the extent that it does not exceed the additional tax
payable by reason of the inclusion of that dividend.

15 (8) Where any additional tax payable under a pro-
prietary assessment has been allowed to any taxpayer
as a rebate under subsection *seven* of this section, the
amount so allowed shall not be again allowable as a
rebate under that subsection to that taxpayer or to the
wife or husband of that taxpayer.

20 (9) For the purposes of subsections *seven* and *eight*
of this section—

25 (a) “Additional tax payable by reason of the
inclusion of that dividend” means the
amount by which the income tax payable in
any year under a proprietary or non-
proprietary assessment which includes that
dividend exceeds the tax that would be pay-
able if that dividend had not been derived in
that year:

30 (b) “Additional tax payable under a proprietary
assessment”—

35 (i) In relation to the income year that
ended on the thirty-first day of March
nineteen hundred and fifty-three, or any
subsequent year, means the amount by which
the tax payable under the proprietary assess-
ment in respect of any such income year
exceeds the tax that would be payable by the
taxpayer under a non-proprietary assessment
in respect of that income year:

1939, No. 34

- (ii) In relation to any income year before the year that ended on the thirty-first day of March, nineteen hundred and fifty-three, means the amount by which the tax payable under an assessment made in accordance with section twenty-three of the Land and Income Tax Amendment Act 1939 in respect of any such income year exceeds the tax that would be payable by the taxpayer under an assessment made in respect of that income year as if that section had not been passed. 5
- (10) With respect to the proprietary income derived by a trustee from a proprietary company during any income year, the following provisions shall apply: 10
- (a) The whole or any part of the proprietary income may for the purposes of this section be allocated by the Commissioner to such one or more of the beneficiaries under the trust, and if more than one in such proportions, as the Commissioner determines. The Commissioner shall make the allocation in such manner as he deems just and equitable, having regard to the respective interests of the beneficiaries under the trust: 15
- (b) If and so far as the proprietary income of the trustee is so allocated to any beneficiary it shall be deemed for the purposes of this section and of section one hundred and two of the principal Act to be also proprietary income derived by the beneficiary as a beneficiary entitled in possession to the receipt thereof under the trust during the same income year, and for the purposes of this section the beneficiary shall be deemed to be a shareholder of the proprietary company accordingly: 25 30 35
- (c) If and so far as the proprietary income of the trustee is not allocated by the Commissioner to any beneficiary, it shall for the purposes of this section and of section one hundred and two of the principal Act be deemed not to be also proprietary income derived by any beneficiary as aforesaid. 40

- (11) This section is in substitution for section twenty- 1939, No. 34
three of the Land and Income Tax Amendment Act 1939,
and that section and the following enactments that
amended that section are hereby repealed, namely:
- 5 (a) Section nine of the Land and Income Tax 1940, No. 3
Amendment Act 1940:
- (b) Section twelve of the Finance Act (No. 2) 1940: 1940, No. 19
- (c) Sections five and six of the Land and Income 1941, No. 18
Tax Amendment Act 1941:
- 10 (d) So much of the Schedule to the Land and Income 1946, No. 38
Tax Amendment Act 1946 as relates to the
Land and Income Tax Amendment Act 1939
and subsection two of section five of the Land
and Income Tax Amendment Act 1941:
- 15 (e) Section ten of the Finance Act 1947: 1947, No. 6
- (f) So much of the Second Schedule to the Land and 1950, No. 22
Income Tax Amendment Act 1950 as relates
to the Land and Income Tax Amendment Act
1939.