

THE BURMA INCOME-TAX (AMENDMENT) ACT, 1953.

[Act No. LXXVII of 1955.]

It is hereby enacted as follows :—

1. (1) This Act may be called the Burma Income-tax (Amendment) Act, 1953.

(2) It shall come into force on the 1st October 1953.

2. For section 1 of the Burma Income-tax Act (hereinafter referred to as "the Act") the following shall be substituted, namely :—

"1. This Act extends to the whole of the Union of Burma ;  
Extent and application. provided that no provision of this Act, which was not applicable on the 1st October 1953 to any State forming a constituent unit of the Union of Burma shall apply thereto, unless the President of the Union by notification so directs."

3. In section 2 of the Act,—

(a) in clause (6) the words "carrying on business in the Union of Burma" shall be deleted ;

(b) in clause (6A) for the words "a company" the words "a company, a local authority or a registered firm" shall be substituted ;

(c) at the end of clause (6AA) the words "provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership ;" shall be inserted ; and

(d) after clause (6AA), the following shall be inserted as clauses (6B) and (6C), namely :—

"(6E) 'dividend' includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

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

(d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of

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October 1949, whether such accumulated profits have been capitalised or not :

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

(6C). 'Deputy Commissioner' means a person appointed to be a Deputy Commissioner of income-tax under section 5 ;”.

4. In section 4 of the Act.—

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

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

(a) are received or are deemed to be received in the Union of Burma in such year by or on behalf of such person, or

(b) if such person is resident in the Union of Burma during such year—

(i) accrue or arise or are deemed to accrue or arise to him in the Union of Burma during such year, or

(ii) accrue or arise to him without the Union of Burma during such year, or

(iii) having accrued or arisen to him without the Union of Burma before the beginning of such year and after the 1st day of October 1949 are brought into or received in the Union of Burma by him during such year, or

(c) if such person is not resident in the Union of Burma during such year, accrue or arise or are deemed to accrue or arise to him in the Union of Burma during such year :

Provided that there shall not be included in any assessment for the year ending on the 30th day of September 1954 both the amount of income, profits and gains, referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of the two amounts :

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

*Explanation 1.*—Income, profits and gains accruing or arising without the Union of Burma shall not be deemed to be

received in or brought into the Union of Burma within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance sheet prepared in the Union of Burma.

*Explanation 2.*—Income which would be chargeable under the head 'Salaries' if payable in the Union of Burma shall be deemed to accrue or arise in the Union of Burma wherever paid if it is earned in the Union of Burma.

*Explanation 3.*—A dividend paid without the Union of Burma by a company shall be deemed to be income accruing or arising in the Union of Burma to the extent to which it has been paid out of the profits subjected to income-tax in the Union of Burma."

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

"(2) For the purposes of sub-section (1), where a husband is not a resident in the Union of Burma remittances received by his wife resident in the Union of Burma out of any part of his income which is not included in his total income shall be deemed to be income accruing in the Union of Burma to the wife." ; and

(c) in clause (i) of sub-section 3) after the words "religious or charitable purposes" the words "within the Union of Burma" shall be inserted.

5. After section 4 of the Act the following shall be inserted as section 4A, namely :—

"4A. For the purposes of this Act—

(a) any individual is resident in the Union of Burma in any year if he—

Residence.

- (i) is in the Union of Burma in that year for a period amounting in all to one hundred and eighty-two days or more ; or
- (ii) maintains or has maintained for him a dwelling place in the Union of Burma for a period or periods amounting in all to one hundred and eighty-two days or more in that year and is in the Union of Burma for any time in that year ; or
- (iii) having within the four years preceding that year been in the Union of Burma for a period or periods amounting in all to three hundred and sixty-five days or more, is in the Union of Burma for any time in that year otherwise than on an occasional or casual visit ; or
- (iv) is in the Union of Burma for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in the Union of Burma during that year is likely to remain in the Union of Burma for not less than three years from the date of his arrival ;

- (b) Hindu undivided family, a firm or other association of persons is resident in the Union of Burma unless the control and management of the affairs is situated wholly without the Union of Burma ; and
- (c) a company is resident in the Union of Burma in any year if it is controlled in the Union of Burma or if it maintains in that year a place of business in the Union of Burma and any part of the activities of that company whether administrative or otherwise is conducted in the Union of Burma but a company shall not be treated as so resident by reason only of the fact that it has a registered office in the Union of Burma at which is transacted such administrative business only as is necessary to comply with the requirements of the Burma Companies Act."

6. In section 5 of the Act,—

(a) in sub-section (1),—

- (i) after clause (b) the following shall be inserted as clause (c), namely :—

“(c) Deputy Commissioner of Income-tax,” and

- (ii) the present clauses (c) and (d) shall be renumbered as clauses (d) and (e) respectively ;

(b) after sub-section (4) the following shall be inserted as sub-section (5), namely :—

“(5) The President of the Union may appoint a Deputy Commissioner of Income-tax for any area specified in the order of appointment. He shall perform his functions in respect of such persons or classes of persons and of such incomes or classes of incomes and in respect of such areas, and such other functions as the President of the Union may direct.” ; and

(c) in sub-section (6), for the words “Assistant Commissioners of Income-tax” the words “The Deputy Commissioner of Income-tax appointed under sub-section (5) and the Assistant Commissioners of Income-tax” shall be substituted.

7. After Chapter II of the Act the following shall be inserted as Chapter II-A, namely :—

#### “CHAPTER II-A.

##### APPELLATE TRIBUNAL.

5A. (1) The President of the Union shall appoint one or more Appellate Tribunals each consisting of the following three wholetime members to exercise the functions conferred on the Appellate Tribunal by this Act :—

- (a) A Judicial member shall be a person, who has for at least five years held a judicial post in the Union of Burma not inferior to that of a district Judge or has practised as an advocate of the High Court for not less than ten years ;

(b) An Accountant member shall be a person who has for a period of not less than five years practised as a Registered Accountant, enrolled on the Register of Accountants maintained under the Burma Auditors Certificate Rules ; and

(c) A Revenue member shall be an officer with experience in revenue matters, who has for at least three years held any post in Government service not inferior in rank to that of a Deputy Commissioner of a District :

Provided the President of the Union may appoint as an Accountant member of the Tribunal any person not possessing the qualifications required by this sub-section if the President of the Union is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal :

Provided further that the Tribunal shall not be deemed to be invalidly constituted merely by reason of death or temporary absence due to retirement or removal of any member.

(2) The President of the Union may appoint any one of the three aforesaid members to be the Chairman of the Appellate Tribunal.

(3) In the event of any difference of opinion among the members of the Appellate Tribunal the opinion of the majority shall prevail.

(4) The Chairman or any other member of the Tribunal specially authorised in this behalf by the President of the Union may, sitting singly, dispose of any case which pertains to an assessee whose total income as computed by the Income-tax Officer concerned does not exceed kyats twenty thousand.

(5) The members of the Tribunal shall be appointed for a fixed term by the President of the Union.

(6) Subject to the provisions of this Act, the Appellate Tribunal may make rules to regulate its own procedure in all matters arising out of the discharge of its functions including the places at which the Tribunal shall hold its sittings.

**5B. Notwithstanding the coming into force of the Burma Income-tax (Amendment) Act, 1953,—**

Transitory provisions consequent on the constitution of the Appellate Tribunal.

- (a) all appeals already duly instituted under section 32 at the time when the said Act comes into force,
- (b) all proceedings then pending before the Commissioner in connection with the exercise of his powers of revision under section 33,
- (c) all applications to the Commissioner, then pending for reference to the High Court under sub-section (2) of section 66, and
- (d) all applications to the High Court, then pending, for the issue of requisition to the Commissioner under sub-section (3) of section 66,

may be continued and disposed of as if the said Act had not come into force, and the provisions of sub-sections (2), (3), (3A), (4), (5) and (6) of section 66, as subsisting before the said Act, came into force shall continue to have effect in relation to the appeals and proceedings referred to in clauses (a) and (b) :

Provided that where under the provisions of section 33A as substituted by the Burma Income-tax (Amendment) Act, 1953, an assessee becomes entitled to appeal to the Appellate Tribunal against any order passed by an Assistant Commissioner under section 28 or section 31 in respect of which he has already lodged an appeal to the Commissioner under section 32 or made any application to the Commissioner for the exercise of his powers of revision under section 33, he may at his option elect to proceed with his appeal to the Commissioner or his application as the case may be, in which case he shall lose his right of appeal to the Appellate Tribunal, or he may elect to appeal to the Appellate Tribunal under section 33A, in which case his appeal to the Commissioner or his application, as the case may be, shall lapse."

8. In section 7 of the Act,—

(a) for the period (.) at the end of the proviso to sub-section (1) a colon (:) shall be substituted and after the said proviso the following shall be inserted as a further proviso, namely :—

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

(b) the present Explanation to sub-section (1) shall be renumbered as Explanation 1 ; and thereafter the following shall be inserted as Explanation 2, namely :—

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

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA or any payment from an approved superannuation fund within the meaning of Chapter IXB :

Provided further that lump sum payments from other funds liable to income-tax shall be assessed separately at a rate representing half the rate of tax applicable to the assessee's total income under the head 'Salaries' (exclusive of the lump sum) for the last complete year of service."

9. In section 9 of the Act,—

- (c) the proviso to sub-section (1) shall be deleted ; and  
(b) after sub-section (2) the following shall be inserted as sub-section (3), namely :—

“(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.”

10. In sub-section (2) of section 10 of the Act,—

- (i) for the colon ( : ) at the end of clause (vi) a semi-colon ( ; ) shall be substituted and thereafter the following shall be inserted, namely :—

“and where the buildings have been newly erected, or the machinery or plant being new has been installed after the 1st October 1953 in respect of the year of erection or installation a further sum by way of initial depreciation allowance equivalent—

- (a) in the case of buildings the erection of which is begun and completed between the 1st day of October 1953 and 30th day of September 1958 (both days inclusive) to 15 per cent of the cost thereof to the assessee ;  
(b) in the case of other buildings to 10 per cent of the cost thereof to the assessee ;  
(c) in the case of machinery or plant, to 15 per cent of the cost thereof to the assessee :” ;

- (ii) after clause (vi), the following shall be inserted as clause (vi a), namely :—

“(vi a) Notwithstanding that the machinery or plant is not used for the whole of the previous year the assessee shall be entitled to full depreciation allowance for that year if the machinery or plant is used even for a portion of that previous year ; and where there had been transfer of assets during the previous year the assessee, who last owned and used the assets, shall be entitled to the said allowance ;” ;

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

“(vii) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the difference between the original cost to the assessee of the building, machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi) and the amount for which the machinery or plant is actually sold or its scrap value :

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

Provided further that any excess in price obtained for the machinery or plant disposed of over the original cost as reduced by the aggregate of the depreciation allowances already given shall be deemed to be the profits of the previous year in which the sale took place ;” ;

(iv) *after* clause (vii a), the following shall be inserted as clause (vii o), namely :—

“(vii b) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (v), (vi) and (vii) in respect of such buildings, ” ;

(v) *for* clause (ix), the following shall be substituted, namely :—

“(ix) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of such business ;” ; and

(vi) *after* the proviso to clause (ix) the following shall be inserted as a further proviso, namely :—

“Provided further that nothing in clause (ix) shall be deemed to authorise any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm. ”

11 *In* section 11 of the Act, sub-section (3) shall be deleted.

12 *In* section 14 of the Act, clause (a) of sub-section (2) shall be deleted.

13 *In* section 16 of the Act, *for* sub-section (2) the following shall be substituted, namely :—

“(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of the company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend :

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the increase to be made



under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company."

14. In section 18 of the Act,—

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

"(2F) Any person responsible for paying any income chargeable under the head 'Salaries' to a person not resident in the Union of Burma shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head."

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

"Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section or in sub-section (2B), as the case may be, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be."

(iii) for sub-sections (3A), (3B), (3C) and (3D) the following shall be substituted, namely :—

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

Provided that where the Income-tax Officer gives a certificate in writing that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be :

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the proviso to section 43 not to be an agent of the payee.

- (3B) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of the Union of Burma to whom any interest not being 'Interest on Securities' or any other sum chargeable under this Act is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for making such payments to such person to deduct at the time of payment super-tax at the rates determined by the Income-tax Officer to be applicable to the total world income of such person in that year.
- (3C) Where the person responsible for paying any interest not being 'Interest on Securities' or any other sum chargeable under this Act to any person makes to that person in any year payments exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force the person responsible for making such payments, shall, if he has no reason to believe that the recipient is resident in the Union of Burma and no order under sub-section (3B) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.
- (3D) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of the Union of Burma and that the total world income of such person will in any year exceed the maximum amount, which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year." ;
- (iv) *after* sub-section (3D) the following shall be inserted as sub-section (3E), namely :—
- "(3E) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company [increased in accordance with the provisions of sub-section (2) of section 16] exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in the Union of Burma and no order under sub-section (3D) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under

the law for the time being in force if the amount of such dividend or dividends (increased as aforesaid) constituted the whole total income of the shareholder.”

(v) *for* sub-section (5) the following *shall be substituted*, namely:—

“(5) Any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-section (2) of section 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act.”

Provided that if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of a tax so deducted, no credit shall be given for the amount of such refund:

Provided further that where such person or owner is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.”;

(vi) *in* sub-section (7) for the words “he shall,” the words “he and in the cases specified in sub-sections (3D) and (3E) the company of which he is the principal officer shall,” *shall be substituted*; and

(vii) *in* sub-section (9), for the expression “(3C) or (3D)” the expression “(3C), (3D) or (3E)” *shall be substituted*.

15. *In* section 23 of the Act, *after* sub-section (4) the following *shall be inserted* as sub-section (5), namely:—

“(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a registered firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined;

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

Provided further that when any of such partners is a person not resident in the Union of Burma, his share of the income, profits and gains of the firm shall be assessed on the firm at the rate applicable to the firm, and the sum so determined as payable shall be paid by the firm.”

16. In section 23A of the Act,—

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

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

(b) for the period (.) at the end of the proviso to sub-section (2) a colon (:) shall be substituted and after the said proviso the following shall be inserted as further provisos, namely:—

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

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

by the amount of income-tax and super-tax payable by the company in respect thereof."

17. In section 24 of the Act,—

(i) for the period (.) at the end of sub-section (1) a colon (:) shall be substituted and the following shall be inserted as provisos to sub-section (1), namely :—

" Provided that in computing the profits and gains chargeable under the head 'Profits and gains of business, profession or vocation' any loss sustained in speculative transactions which are in the nature of a business shall not be taken into account except to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions :

*Explanation 1.*—Where the speculative transactions carried on are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business.

*Explanation 2.*—A speculative transaction means a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips :

Provided further that for the purposes of this section—

- (a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him ; or
- (b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations ; or
- (c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member ;

shall not be deemed to be a speculative transaction :

Provided further that where the assessee is an unregistered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm ; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section."

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

“(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year ending on the 30th September 1953 under the heads ‘Business’, ‘Profession’ or ‘Vocation’ and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year, and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be carried forward for more than three years, and a loss arising in the previous years for the assessment years ending on the 30th September 1954, the 30th September 1955 and 30th September 1956 respectively, shall be carried forward only for one, two and three years respectively :

Provided that—

- (a) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of section 10, to be carried forward, effect shall first be given to the provisions of this sub-section ;
- (b) nothing herein contained shall entitle any assessee, being a registered firm to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1) or entitle any assessee being a partner in an unregistered firm to have carried forward and set off against his own income any loss sustained by the firm ;
- (c) where a change has occurred in the constitution of the firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of section 16 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said section, and where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.” ; and

(iii) after sub-section (2) the following shall be inserted as sub-section (3), namely :—

“(3) When, in the course of assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the

Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section."

18. In section 26 of the Act, for sub-sections (1) and (2) the following shall be substituted, namely :—

"(1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment :

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

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

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

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

19. In section 28 of the Act, for proviso (a) to sub-section (1) the following shall be substituted, namely :—

"(a) no penalty for failure to furnish a return under section 22 (1) shall be imposed on an assessee whose total income does not exceed the maximum amount not chargeable to income-tax by more than kyats one thousand ;"

20. For section 30 of the Act the following shall be substituted, namely :—

"30. (1) Any assessee objecting to the amount of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or

Appeal against assessment under the Act

section 27, or denying his liability to be assessed under this Act, or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23 or objecting to any order under section 18A or to a refusal to register a firm under sub-section (4) of section 23 or section 26A or to make a fresh assessment under section 27, or objecting to any order under sub-section (2) of section 25 or section 25A or section 28 made by an Income-tax Officer, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund or to the amount of the refund allowed by the Income-tax Officer, and any assessee, objecting to an order made by an Income-tax Officer under sub-sections (1) and (2) of section 23A, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :

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

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

(1A) Any person having, in accordance with the provisions of sub-section (3A), (3B) or (3C) of section 18, read with sub-section (6) of that section deducted and paid tax in respect of any sum chargeable under this Act other than interest, who denies his liability to make such deduction may appeal to the Assistant Commissioner to be declared not liable to make such deduction.

(2) The appeal shall ordinarily be presented within thirty days of the payment of the tax deducted under sub-section (3A), (3B), or (3C) of section 18 or of receipt of the notice of demand relating to the assessment or penalty objected to or of the order in writing notifying the amount of loss computed under section 24, or of the intimation of the refusal to pass an order under sub-section (1) of section 25A, or to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27, or of the intimation of an order under sub-section (2) of section 23A or under section 48, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant has sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner. "



21. For section 31 of the Act the following shall be substituted, namely:—

“ 31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal make such further enquiry as he thinks fit, or cause further enquiry to be made by the Income-tax Officer.

(3) In disposing of any appeal the Assistant Commissioner may, in the case of an order of assessment—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further enquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment,

or, in the case of an order cancelling the registration of a firm under sub-section (4) of section 23 or refusing to register a firm under sub-section (4) of section 23 or section 26A or to make a fresh assessment under section 27,

(c) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,

or, in the case of an order under sub-section (2) of section 25 or section 23A, 18A or 48,

(d) confirm, cancel or vary such order,

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

(e) confirm such order or cancel it and either direct the Income-tax Officer to make further enquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A,

or, in the case of an order under section 22;

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

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

(g) confirm or vary such computation,

or, in the case of an appeal under sub-section (1A) of section 30,

(h) decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (6) of section 18 ;

Provided that the Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

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

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

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

" 33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such enquiry, or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard."

*Explanation.*—An order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

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

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

23. For section 33A of the Act the following shall be substituted, namely:—

" 33A. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him,

- (2) The Commissioner may, if he objects to any order passed by an Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made within sixty days of the date on which the order is communicated to the Commissioner by the Assistant Commissioner.
- (3) The Tribunal may admit an appeal after the expiry of sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (4) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall except in the case of an appeal referred to in sub-section (2) be accompanied by a fee of kyats one hundred.
- (5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.
- (6) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.
- (7) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final."

24. In section 34 of the Act, for the words "one year" the words "four years" shall be substituted.

25. In section 35 of the Act,—

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

"(1) The Commissioner or Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33, and the Income-tax Officer may, at any time within four years from the date of assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by the assessee :

Provided that no such rectification shall be made having the effect of enhancing an assessment unless the Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard." ; and

(b) after sub-section (3) the following shall be inserted as sub-section (4), namely :—

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

26. In section 42 of the Act, for sub-section (2) the following shall be substituted, namely :—

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

27. For section 44 of the Act the following shall be substituted namely :—

"44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

28. After Chapter V-A of the Act the following shall be inserted as Chapter V-B, namely :—

#### "CHAPTER V-B.

##### RECOVERY OF TAX FROM PERSONS LEAVING THE UNION OF BURMA FOR GOOD.

44D. (1) Subject to such exceptions as may be made by the President of the Union, no person who is not domiciled in the Union of Burma shall leave the Union either by land, sea or air unless he first obtains from the competent authority a taxation certificate stating that he has no liabilities under this Act or under the Business Profits Tax Act, for the time being in force, or that satisfactory arrangements have been made for the payment of all such taxes which are or may become payable by that person :

Provided that if the competent authority is satisfied that such person intends to return to the Union of Burma he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within the specified period.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the Union of Burma to any place outside the Union issues an authority to travel by such ship or aircraft to any person to whom sub-section (1) applies without first satisfying himself that such person is in possession of a certificate as required by that

sub-section, he shall be liable to pay the amount of tax, if any, which has or may become due and payable by such person and shall also be punishable with fine which may extend to kyats two thousands.

*Explanation.*—For the purposes of this sub-section the expressions 'owner' and 'charterer' include any representative, agent or employee who may be empowered by the owner or charterer to issue an authority to travel by the ship or aircraft.

(2) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be shall be deemed to be an assessee in default within the meaning of sub-section (1) of section 46.

(4) The President of the Union may make rules under this section prescribing the competent authority mentioned in sub-section (1), exempting certain categories of persons from the operation of this section, and regulating any other matter necessary for or incidental to the purpose of carrying out the provisions of this section."

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

- " 48. (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the President of the Union in this behalf that the amount of tax paid by him or, on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.
- (2) The Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers, if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.
- (3) Where income of one person is included under any provisions of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.
- (4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Burma Income-tax (Amendment) Act, 1953, which he would not be entitled to claim but for the passing of that Act."

30. Sections 48A and 50A of the Act shall be deleted.

Repeal of sections 48A  
and 50A...

31. For section 32 of the Act the following shall be substituted namely:—

"52. (1) If a person makes a statement in a verification mentioned in section 19A or section 20A or section 22 or sub-section (2) of section 26A or sub-section (3) of section 30 or sub-section (2) of section 32 or sub-section (1) of section 33A, which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable on conviction before a Magistrate, with imprisonment of either description for a term which may extend to five years or with fine or with both.

(2) Whoever instigates, intentionally aids or abets any person to commit any of the offences mentioned in sub-section (1) shall be punishable on conviction before a Magistrate with imprisonment of either description for a term which may extend to five years or with fine or with both."

32. For the period (.) at the end of the proviso to section 55 of the Act a colon (:) shall be substituted and after the said proviso the following shall be inserted as a further proviso, namely:—

"Provided further that where there is included in the total income of an assessee having a share in an unregistered firm, any income exempted under the provisions of the above proviso, the super-tax payable by the assessee on the unexempted portion of the total income shall be an amount bearing to the total amount of super-tax payable on the total income had no part of it been exempted, the same proportion as the unexempted portion bears to the total income."

33. In section 59 of the Act, after clause (b) of sub-section (2) the following shall be inserted as clause (bb), namely:—

"(bb) prescribe the language or languages in which accounts shall be maintained for purposes of income-tax assessment and the date on which the provisions of this clause shall be given effect to;"

34. For section 66 of the Act the following shall be substituted namely:—

"66. (1) Within sixty days of the date upon which he is served with notice of an order under sub-section (5) of section 33A the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of kyats one hundred, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court:

Statement of case by  
Appellate Tribunal to  
High Court.

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the

assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

- (2) If on any application being made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that a question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.
- (3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).
- (4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.
- (5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.
- (6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.
- (7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of the assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

- (8) Section 5 of the Limitation Act shall apply to an application to the High Court by an assessee under sub-section (2) or sub-section (3)."