

THE BURMA INCOME-TAX (AMENDMENT) ACT, 1954.

[ACT NO. XXIX OF 1954.]

It is hereby enacted as follows :—

1. (1) This Act may be called the Burma Income-tax (Amendment) Act, 1954.

(2) It shall be deemed to have come into force on the 1st day of October 1953.

2. In clause (6) of section 2 of the Burma Income-tax Act (hereinafter referred to as "the Act"), for the words "any foreign association" the words "any Board constituted under any Act of Parliament or any order made thereunder, and any foreign association" shall be substituted.

3. In section 4A of the Act, for clause (c) the following shall be substituted, namely :—

- "(c) a company is resident in the Union of Burma in any year
- (a) if the control and management of its affairs is situated wholly in the Union of Burma in that year, or
- (b) if its income arising in the Union of Burma in that year exceeds its income arising without the Union of Burma in that year."

4. In section 5 of the Act,—

- (a) in clause (c) of sub-section (1) for the word "Deputy" the word "Additional" shall be substituted ;
- (b) in sub-section (5) for the words "a Deputy" the words "an Additional" shall be substituted ;
- (c) in sub-section (6) for the word "Deputy" the word "Additional" shall be substituted ; and
- (d) after sub-section (6) the following shall be inserted as sub-section (7), namely :—

"(7) Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be re-heard :

Provided further that in computing the period of limitation for the purposes of section 34, the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the preceding proviso shall be excluded."

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5. In section 9 of the Act, *for* the semi-colon (;) at the end of clause (iv) of sub-section (1) a colon (:) *shall be substituted* and *thereafter* the following *shall be inserted* as proviso to the said clause, namely :—

“ Provided that no allowance shall be made in respect of any interest or annual charge payable without the Union of Burma and chargeable under this Act except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in the Union of Burma who may be assessed under section 43 ; ”.

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

(a) *for* the semi-colon (;) at the end of clause (iii) a colon (:) *shall be substituted* and *thereafter* the following *shall be inserted* as proviso to the said clause, namely :—

“ Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without the Union of Burma except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in the Union of Burma who may be assessed under section 43 ; ” ; and

(b) in the second proviso to clause (vii) *for* the words “ machinery or plant ” the words “ building, machinery or plant ” *shall be substituted*.

7. In section 12 of the Act, *for* the period (.) at the end of sub-section (2) a comma (,) *shall be substituted* and *thereafter* the following *shall be inserted*, namely :—

“ or any interest chargeable under this Act which is payable without the Union of Burma not being interest on which tax has been paid or from which tax has been deducted under section 18.”

8. *After* section 17 of the Act the following *shall be inserted* as section 17A, namely :—

“ 17A. Where a person is not resident in the Union of Burma and is not a company, the tax, including super-tax payable by him or on his behalf on his total income shall be an amount equal to—

Determination of tax payable in certain special cases.

(a) the income-tax which would be payable on his total income at the maximum rate, *plus*

(b) either the super-tax which would be payable on his total income at the rate applicable in the case of an individual to the slab next to the slab exempt from super-tax, or the super-tax which would be payable on his total income if it were the total income of a person resident in the Union of Burma, whichever is greater ;

Provided that any such person may, on the first occasion on which he is assessable for any year subsequent to the year ending on the 30th September 1953 and before the thirty-first day of May 1954 by notice in writing to the Income-tax Officer, declare (such declaration being final and being applicable to all assessments thereafter) that the tax, including super-tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon such tax shall be an amount bearing to the total amount of tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

Provided further that where any such person satisfies the Income-tax Officer that he was prevented by sufficient cause from making such declaration on the first occasion on which he became assessable and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, allow such person to make the declaration at any time after the expiry of the period specified, and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments thereafter."

9. In section 18 of the Act,—

(a) in sub-section (2B), for the words "at the rate or rates applicable to the estimated income of the assessee under this head." the following shall be substituted, namely:—

"on the estimated income of the assessee under this head in accordance with the provisions of clause (b) of section 17A :

Provided that where—

(i) the person not so resident has obtained a certificate in writing from the Income-tax Officer (which certificate the Income-tax Officer shall be bound to give in every proper case on the application of the assessee) stating that income-tax and super-tax may be deducted at the rates specified therein, or

(ii) the Income-tax Officer has by an order in writing, required the person responsible for making payment to deduct income-tax and super-tax at the rates specified in that order, the person responsible for making payments shall, until such certificate or order is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or order, as the case may be."

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

(3A) The person responsible for paying any income chargeable under the head 'Interest on Securities' to a person whom he has no reason to believe to be resident in the Union of Burma, shall, at the time of payment, deduct super-tax on the amount of such interest—

- (i) if such person is a company, at the rate applicable to a company,
- (ii) if such person is not a company, in accordance with the provisions of clause (b) of section 17A :

Provided that where such person is not a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B).

(3B) 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 and super-tax thereon as an agent, deduct income-tax at the maximum rate and super-tax at the rate applicable to a company or in accordance with the provisions of clause (b) of section 17A, as the case may be :

Provided that where the person not resident is not a company, the proviso to sub-section (2B) shall apply to the deduction of income-tax and super-tax under this sub-section as it applies to the deduction of income-tax and super-tax under sub-section (2B) :

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

(3C) Where the person responsible for paying any sum chargeable under this Act other than interest, to a person not resident in the Union of Burma, considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable and upon such determination tax shall be deducted therefrom by the person responsible for making such payment in accordance with the provisions of sub-section (3B).

(3D) The principal officer of a company shall, at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be resident in the Union of Burma, deduct super-tax on the amount of such dividend as increased in accordance with the provisions of sub-section (2) of section 16—

- (i) if the shareholder is a company, at the rate applicable to a company,

- (ii) if the shareholder is a person other than a company, in accordance with the provisions of clause (b) of section 17A :

Provided that in the case of a shareholder other than a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B).”;

- (c) in sub-section (7), for the expression “sub-sections (3D) and (3E)” the expression “sub-section (3D)” shall be substituted;
- (d) in sub-section (9), for the expression “(3C), (3D) or (3E)”, the expression “(3c) or (3d)” shall be substituted; and
- (e) after sub-section (9) the following Explanation shall be inserted, namely :—

“Explanation.—For the purposes of this section and section 20A, the expression ‘person responsible for paying’ means—

- (i) in the case of payments of income chargeable under the head ‘Salaries’ other than payments by the Union Government or the Government of a State, the employer himself or if the employer is a company, the company itself including the principal officer thereof ;
- (ii) in the case of payments of income chargeable under the head ‘Interest on Securities’, other than payments made by or on behalf of the Union Government or the Government of a State, the local authority or company including the principal officer thereof ;
- (iii) in the case of payment of interest not being ‘Interest on Securities’, the payer himself or if the payer is a company, the company itself including the principal officer thereof.”

10. In section 18A of the Act,—

- (a) in sub-section (5) for the words “from the date of payment to the date of the assessment” the words “from the date of payment to the date of provisional assessment made under section 23B, or if no such assessment has been made, to the date of the assessment” shall be substituted ; and
- (b) for the first proviso to sub-section (6) the following shall be substituted, namely :—

“Provided that where a provisional assessment is made under section 23B, interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income to which the provisions of section 18 do not apply) falls short of the said eighty per cent :

Provided also that, where as a result of an appeal under section 31 or a revision under section 33 or an appeal to the Appellate Tribunal under section 33A or of a reference to the High Court under section 66, the amount on which the interest was payable under this sub-section has been reduced the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable.”

11. In section 22 of the Act.—

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

“(2A) If any person, who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains in any year under the head ‘Profits and gains of business, profession or vocation’, and such loss or any part thereof would ordinarily have been carried forward under sub-section (2) of section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1).” ; and

(b) in sub-section (4) for the words “such accounts or documents as the Income-tax Officer may require” the following shall be substituted, namely:—

“such accounts or documents, including accounts relating to any year subsequent to the previous year, as the Income-tax Officer may require or to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities not included in the accounts) as the Income-tax Officer may require.”

12. In section 23 of the Act, for the second proviso to sub-section (5) the following shall be substituted, namely:—

“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 rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm.”

13. In section 23A of the Act, in clause (b) of the explanation to sub-section (2) the words “India or Pakistan or” shall be deleted.

14. After section 23A of the Act the following shall be inserted as section 23B, namely :—

- “23B. (1) The Income-tax Officer may, at any time after the receipt of a return made under section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of section 10, and (ii) any loss carried forward under sub-section (2) of section 24.
- Power to make provisional assessment in advance of regular assessment.
- (2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firm's income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.
- (3) There shall be no right of appeal against a provisional assessment made under sub-section (1).
- (4) For the avoidance of doubt, it is hereby declared that the provisions of section 45 and section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 23.
- (5) Income-tax paid or deemed to have been paid under section 18 or section 18A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.
- (6) After a regular assessment has been made under section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.
- (7) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under section 23.”

15. In section 33 of the Act, in paragraph (c) of the second proviso to sub-section (2) for the words “two years” the words “four years” shall be substituted.

16. In section 33A of the Act, for the period (.) at the end of sub-section (2) a colon (:) shall be substituted and thereafter the following shall be inserted, as provisos to sub-sections (1) and (2) thereof namely :—

- “ Provided that when an order passed by an Assistant Commissioner of Income-tax under section 28 or section 31 was communicated to the assessee or the

Commissioner as the case may be, on or after the 1st October 1953 and before the date of constitution of the Appellate Tribunal under section 5A, an appeal under sub-section (1) or (2) may be made within sixty days from the date of promulgation of the Burma Income-tax (Amendment) Act, 1954 :

Provided further that an assessee entitled to elect to appeal to the Appellate Tribunal under the proviso to section 5B may elect to appeal thereto within sixty days from the date of promulgation of the Burma Income-tax (Amendment) Act, 1954."

17. In section 35 of the Act, *after* sub-section (4) the following shall be inserted as sub-section (5), namely :—

"(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or re-assessment of the firm or on any reduction or enhancement made in the income of the firm under section 31, section 33, section 33A, section 66 or section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm."

18. Section 36 of the Act shall be deleted.

19. *After* section 39 of the Act the following shall be inserted as section 39A and section 39B, namely :—

"39A. The Income-tax Officer or the Assistant Commissioner of Income-tax shall have power—

General power to enter buildings or business premises for purposes of enquiry. (1) to enter or to inspect any building, place or business premises in connection with any enquiry or investigation conducted by him for purposes of assessment of any assessee or for the disposal of any appeal filed by an appellant under this Act ;

(2) to examine any books of account or document found therein which in his opinion will be useful for or relevant to the enquiry or investigation conducted by him ;

(3) to make a note or an inventory of any article or thing found in the course of such enquiry or investigation which in his opinion may be useful for or relevant to the disposal of the assessment or of the appeal before him ; and

(4) to place marks of identification on the books of account or documents or to make extracts or copies therefrom.

39B. If in the course of an assessment or disposal of an appeal the Income-tax Officer or the Assistant Commissioner of Income-tax has reason to suspect that any books of account or documents essential for the disposal of the assessment or appeal may not be forthcoming, when required, or

Power to search, seize and impound accounts and documents in certain cases.

that any document or books of account had been withheld from production the Income-tax Officer or the Assistant Commissioner of Income-tax, if specially authorized in this behalf by the Commissioner of Income-tax, shall, in addition to the powers conferred by section 39A, have power—

- (1) to search any building, place or business premises and seize any books of account or document (for which a receipt shall be granted) or place marks of identification thereon or make extracts or copies therefrom ; and
- (2) to impound and retain in his custody any books of account or document found therein only for so long as may be necessary for examination thereof pending the final disposal of the assessment or appeal as the case may be."

20. In sub-section (2) of section 44B of the Act, for the word "one-twentieth" the word "one-sixth" shall be substituted.

21. In section 45 of the Act, the words "or under section 33A" shall be deleted.

22. In section 46 of the Act, after sub-section (5) the following shall be inserted as sub-section (5A), namely :—

"(5A) The Income-tax Officer may at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the tax-payer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer."

23. In section 49B of the Act, the words "or 48A" shall be deleted.

24. After section 49B of the Act the following shall be inserted as section 49c, namely :—

"49c. Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in section 3 who is a shareholder of a company which is assessed to income-tax in the Union of Burma, such person shall, if the dividend is included in his total income, be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of the company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company."

25. In section 50 of the Act, for the words "one year" the words "four years" shall be substituted.