

THE BURMA INCOME-TAX (SECOND AMENDMENT) ACT,
1957

[ACT NO. XLI OF 1957]

It is hereby enacted as follows :—

1. (1) This Act may be called the Burma Income-tax (Second Amendment) Act, 1957.

(2) It shall come into force on the 1st day of October 1957 ; provided that sections 5 and 14 shall be deemed to have come into force on the 1st day of October 1953 and on the 1st day of October 1956 respectively.

2. In section 2 of the Burma Income-tax Act (hereinafter referred to as the Act),—

(a) after clause (4) the following shall be inserted as clause (4A) namely :—

“(4A) ‘ Capital asset ’ means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

- (i) any stock-in-trade, consumable stores or raw materials, held for the purposes of his business, profession or vocation ;
- (ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him ;
- (iii) any land from which the income derived is agricultural income ;” ;

(b) after the proviso to sub-clause (d) of clause (6B) the following proviso shall be inserted, namely :—

“ Provided further that the expression ‘ accumulated profits ’ wherever it occurs in this clause, shall not include capital gains arising before the first day of October 1956 ;” ;

(c) after clause (6B) the following shall be inserted as clause (6c), namely :—

“(6c) ‘ income ’ includes—

- (i) dividends ;
- (ii) the value of any perquisite or profit in lieu of or in addition to salary taxable under section 7 ;
- (iii) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by any other person who has a substantial interest in the company (that is to say, who is concerned in the management of the business of the company, being the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power), and any sum paid by

any such company in respect of any obligation which but for such payment would have been payable by the director or other person aforesaid ;

(iv) any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and any sum deemed to be profits and gains under sub-section (2A) of that section or under sub-section (3) of section 11 or under sub-section (3) of section 12 ;

(v) any capital gain chargeable under section 12A ;”

(d) the existing clause (6c) shall be renumbered as clause “(6D)” ; and

(e) in clause (15) for the expression “ does not apply ; and ” the expression “ does not apply and except any capital gain which is not includible in the total income of an assessee ; and ” shall be substituted.

3. In sub-section (3) of section 4 of the Act,—

(a) the period (.) at the end of clause (iv) shall be deleted and thereafter the words “ and any capital gains of the Fund arising from the sale, exchange, relinquishment or transfer of such securities.” shall be inserted ;

(b) for clause (vi), the following shall be substituted as clause (vi), namely :—

“(vi) Any special allowance or benefit, not being perquisite within the meaning of sub-section (1) of section 7, specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose.” ; and

(c) for clause (vii), the following shall be substituted as clause (vii), namely :—

“(vii) Any receipts not being capital gains chargeable according to the provisions of section 12A and not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.”

4. In section 4 of the Act, for the period (.) at the end of sub-clause (b) of clause (c) a comma (,) shall be substituted and thereafter the words “ account not being taken in either case of income chargeable under the head ‘Capital gain’.” shall be inserted.

5. In section 5A of the Act, after the first proviso to sub-section (1) the following shall be inserted as second proviso, namely :—

“ Provided further that the President of the Union may appoint as a Judicial 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 ; ”

6. After clause (vi) of section 6 of the Act the following shall be added as clause (vii), namely :—

“(vii) Capital gains.”

7. In section 7 of the Act,—

(a) for “*Explanation 1.*”, the following shall be substituted namely :—

“*Explanation 1.*—For the purposes of this section, ‘perquisite’ includes—

- (i) the value of rent-free accommodation or the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer ;
- (ii) the value of any benefit or amenity granted or provided by a company free of cost or at concessional rate to an employee who is a director thereof or who is substantially interested in the company within the meaning of sub-clause (iii) of clause (6c) of section 2;
- (iii) the value of any benefit or amenity granted or provided to any assessee [not being an assessee to whom the provisions of clause (ii) apply] by his employer free of cost or at concessional rate in any case where the income of the assessee under the head ‘salaries’ exclusive of the value of all benefits or amenities not provided for by way of monetary payment exceeds eighteen thousand kyats ;
- (iv) any sum paid by the employer in respect of any obligation which but for such payment would have been payable by the assessee ; and
- (v) any sum payable by the employer, whether directly or through a fund to which the provisions of Chapter IX-A and IX-B do not apply to effect an insurance on the life of the assessee or in respect of a contract for an annuity on the life of the assessee.” ; and

(b) for “*Explanation 2.*”, the following shall be substituted, namely :—

“*Explanation 2.*—For the purposes of this section, ‘profits in lieu of salary’ includes any payment due to or received by an assessee from an employer or former employer or from a Provident or other Fund to the extent to which it does not consist of contributions by the assessee or interest on such contributions, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :”.

8. After sub-section (2) of section 10 of the Act, the following shall be inserted as sub-section (2A), namely :—

“(2A) Where, for the purpose of computing profits or gains under this section, an allowance or deduction has been made in the assessment for any year in respect of any loss, expenditure or trading liability incurred by the assessee and, during any subsequent previous year, the assessee has received, whether in cash or in any other

in manner whatsoever, any amount in respect of such loss or expenditure or has obtained some benefit in respect of such trading liability by way of remission or cessation thereof, the amount received by him or the value of the benefit accruing to him shall be deemed to be profits and gains of business and to have accrued or arisen during that subsequent previous year."

9. After sub-section (2) of section 11 of the Act, the following shall be inserted as sub-section (3), namely :—

"(3) Provisions of sub-section (2A) of section 10 shall apply, so far as may be, in computing income, profits and gains of an assessee under this section as they apply in computing profits or gains of an assessee under that section."

10. After sub-section (2) of section 12 of the Act, the following shall be inserted as sub-section (3), namely :—

"(3) Provisions of sub-section (2A) of section 10 shall apply, so far as may be, in computing income, profits and gains of an assessee under this section as they apply in computing profits or gains of an assessee under that section."

11. After section 12 of the Act, the following shall be inserted as section 12A, namely :—

"12A. *Capital gains*.—(1) The tax shall be payable by an assessee under the head 'Capital Gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 30th day of September 1956, and such profits and gains shall be deemed to be the income of the previous year in which the sale, exchange, relinquishment or transfer took place :

Provided that any distribution of capital assets on the total or partial partition of a Hindu undivided family or under a deed of gift, bequest or will shall not for the purposes of this section be treated as a sale, exchange, relinquishment or transfer of the capital assets :

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in the Union of Burma and is registered under the Burma Companies Act, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange,

relinquishment or transfer of the capital asset is made, namely :—

- (i) expenditure incurred solely in connection with such sale, exchange, relinquishment or transfer;
- (ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10, 11 and 12 :

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange, relinquishment or transfer is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange, relinquishment or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange, relinquishment or transfer is made shall, with the prior approval of the Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange, relinquishment or transfer took place :

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its original cost as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10 :

Provided further that where the capital asset became the property of the assessee, or of the previous owner where the cost of the capital asset to the previous owner is to be taken in accordance with sub-section (3), before the 1st day of July 1954, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10 :

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange, relinquishment or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

- (3) Where any capital asset became the property of the assessee by succession, inheritance or devolution or on any distribution of capital assets on the total or partial partition of a Hindu undivided family or on the dissolution of a firm or other association of persons or on the liquidation of a company or under a deed of gift, or transfer on irrevocable trust, its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof :

Provided that where the capital asset became the property of the assessee—

- (i) before the 1st day of October 1956, under a deed of gift or on the partition of a Hindu undivided family, the actual cost allowable to him shall be the fair market value of the capital asset on the date of the gift or the date of the partition, as the case may be, if such value is greater than the actual cost to the previous owner or the fair market value thereof on the 1st day of July, 1954, where the third proviso to sub-section (2) applies ;
- (ii) on or after the 1st day of October 1956, on partition of a Hindu undivided family, the cost allowable to him shall be the fair market value on the date of the partition.
- (4) Notwithstanding anything contained in sub-section (1)—

- (a) where a capital gain arises from the sale, exchange or transfer of one or more capital assets being property the income of which is chargeable under section 9, and the full aggregate value of the consideration for which the sale, exchange or transfer is made does not exceed the sum of twenty-five thousand kyats, the capital gain shall not be charged under this section and shall not also be included in the total income of the assessee :

Provided that this clause shall not apply in any case where the aggregate of the fair market values of all capital assets, being property the income of which is chargeable under section 9, owned by the assessee immediately before the sale, exchange or transfer aforesaid is made, exceeds the sum of seventy-five thousand kyats ;

- (b) where a capital gain arises from the sale, exchange, relinquishment or transfer of a capital asset to which the provisions of clause (a) are not applicable, being property the income of which is chargeable under section 9, which in the two years immediately preceding the date on which the sale, exchange, relinquishment or transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within

a period of one year before or after that date purchased a new property for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange, relinquishment or transfer took place, it shall, if the assessee so elects in writing before the assessment is made, be dealt with in accordance with the following provisions of this clause, that is to say,—

- (i) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under this section."

12. After sub-section (3) of section 17 of the Act, the following shall be inserted as sub-sections (4) and (5), namely :—

"(4) where the total income of an assessee, not being a company, includes any income chargeable under the head 'Capital gains,' the tax, including super-tax, payable by him on his total income shall be—

- (i) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, plus
- (ii) on the whole amount of such inclusion, income-tax equal to the amount which bears to the income-tax which would have been payable on his total income as reduced by two-thirds of the amount of such inclusion the same proportion as the whole amount of such inclusion bears to such reduced total income :

Provided that where the amount of such inclusion does not exceed the sum of ten thousand kyats or the total income does not exceed the sum of twenty thousand kyats such income-tax shall be nil and in any other case such income-tax shall not exceed one half of the amount by which the amount of such inclusion exceeds the sum of ten thousand kyats.

(5) Where the total income of a company includes any income chargeable under the head 'Capital gains', the super-tax payable by it shall be calculated on its total income as reduced by the amount of such inclusion."

13. In section 18A of the Act,—

(a) in sub-section (2), for the words "is less" the words "is either more or less" and for the words "an amount less" the words "an amount either more or less" shall be substituted; and

(b) after sub-section (12), the following shall be inserted as sub-section (13), namely :—

"(13) Any income chargeable under the head 'Capital gains' shall not be taken into account for any of the purposes of this section."

14. In section 23 of the Act,—

(a) *for* sub-section (5), the following *shall be substituted 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,—

- (i) the income-tax payable by the firm itself shall be determined ; and
- (ii) 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 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.” ; and

(b) *after* sub-section (5), the following *shall be inserted as* sub-section (6), namely :—

“(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners.”.

15. In section 24 of the Act,—

(a) *after* the second proviso to sub-section (1), the following further proviso *shall be inserted*, namely :—

“Provided further that where the loss sustained is a loss from the cultivation of rubber, tea or coffee such loss shall not be taken into account except to the extent of the amount of the profits and gains, if any, from such cultivation :” ; and

(b) *after* sub-section (2) the following *shall be inserted as* sub-sections (2A) and (2B), namely :—

“(2A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head ‘Capital gains,’ such loss shall not be set-off except against any profits and gains falling under that head.

(2B) Where an assessee sustains a loss such as is referred to in the third proviso to sub-section (1) or as is referred

to in sub-section (2A) and the loss cannot be wholly set-off in accordance with the provisions of those sub-sections, the portion not so set-off shall be carried forward to the following year and set-off against any profits and gains under rubber, tea or coffee cultivation or against capital gains as the case may be, for that year, and if it cannot be so set-off, the amount thereof not so set-off shall be carried forward to the following year and so on :

Provided that where the loss sustained by an assessee, not being a company, in any previous year does not exceed ten thousand kyats, it shall not be carried forward."

16. For section 26A of the Act, the following shall be substituted as section 26A, namely :—

"26A. Procedure in registration of firms.—(1) Application may be made to the Income-tax Officer on behalf of any firm, constituted by an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax :

Provided that—

- (a) in the case of a firm situated in any area to which the provisions of the Registration Act apply, such instrument of Partnership is registered under the Registration Act ; and
 - (b) in the case of a firm situated in any area to which the provisions of Chapter VII of the Partnership Act apply, such firm is duly registered under the Partnership Act.
- (2) The application shall be made by such persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed ; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed."

17. In section 38 of the Act, for the period (.) at the end of clause (3) a semi-colon (;) shall be substituted, and after the said clause, the following shall be inserted as clauses (4) and (5), namely :—

- "(4) require any person to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, premium, interest, commission, discount, royalty, brokerage, profit or any sum for contract works or for any undertaking or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than one thousand kyats, together with particulars of such payments made ;
- (5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange, relinquishment or transfer of a capital asset, or on whose behalf or from

whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

18. In sub-section (1) of section 42 of the Act, *after* the words "in cash or in kind," the words "or through or from the sale, exchange, relinquishment or transfer of a capital asset in the Union of Burma," *shall be inserted*.

19. *After* section 43 of the Act the following explanation *shall be inserted*, namely:—

Explanation.—A person, whether residing in or out of the Union of Burma, who acquires, after the 31st day of August 1957, whether by sale, exchange, relinquishment or transfer, a capital asset in the Union of Burma from a person residing out of the Union of Burma shall, for the purposes of charging to tax the capital gain arising from such sale, exchange, relinquishment or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of the Union of Burma."

20. In section 47 of the Act, *after* the expression "sub-section (1)" the expression "or sub-section (1A)" *shall be inserted*.

21. In clause (d) of sub-section (1) of section 58C of the Act, *after* the words "securities purchased therewith," the words "and of any capital gains arising from the sale, exchange, relinquishment or transfer of capital assets of the fund," *shall be inserted*.

22. In section 58R of the Act, *after* the words "investments of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange, relinquishment or transfer of capital assets of such fund" *shall be inserted*.

23. In sub-section (3) of section 61 of the Act, *after* the expression "the 1st day of October 1946" the words "or in the case of an accountant or an Income-tax practitioner, no person who is not a citizen of the Union of Burma" *shall be inserted*.