

THE BURMA INCOME-TAX ACT.

CONTENTS.

Sections.

1. Extent and application.
2. Definitions.

CHAPTER I.

CHARGE OF INCOME-TAX.

3. Charge of income-tax.
4. Application of the Act.
- 4A. Residence.

CHAPTER II.

INCOME-TAX AUTHORITIES.

5. Income-tax authorities.

CHAPTER II-A.

APPELLATE TRIBUNAL.

- 5A. Appellate Tribunal.
- 5B. Transitory provisions consequent on the constitution of the Appellate Tribunal.

CHAPTER III.

TAXABLE INCOME.

6. Heads of income chargeable to income-tax.
7. Salaries.

Sections.

8. Interest on securities.
9. Property.
10. Business.
11. Professional earnings.
12. Other sources.
13. Method of accounting.
14. Exemptions of a general nature.
15. (1) Exemption in the case of life insurances.
(2) Exemption on account of allowance for wife and children.
- 15A. Exemption of portion of earned income.
- 15B. Exemption on account of donations for charitable purposes.
- 15C. Exemption from tax of newly established industrial undertakings.
16. Exemptions and exclusions in determining the total income.
17. Determination of tax payable where portion of total income is exempt.
- 17A. Determination of tax payable in certain special cases.

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

18. Payment by deduction at source.
- 18A. Advance payment of tax.
19. Payment in other cases.
- 19A. Supply of information regarding dividends.
20. Certificate by company to shareholders receiving dividends.
- 20A. Supply of information regarding interest.
21. Annual return.
22. Return of income.
23. Assessment.
- 23A. Power to assess individual members of certain firms, associations and companies.
- 23B. Power to make provisional assessment in advance of regular assessment.
24. Set-off of loss in computing aggregate income.
- 24A. Assessment in case of departure from the Union of Burma.
- 24B. Tax of deceased person payable by representative.
25. Assessment in case of discontinued business.
- 25A. Assessment after partition of a Hindu undivided family.
26. (1) Change in constitution of a firm.
(2) Change of ownership of business.
- 26A. Procedure in registration of firms.
27. Cancellation of assessment when cause is shown.
28. Penalty for concealment of income or improper distribution of profits.

Sections.

- 29. Notice of demand.
- 30. Appeal against assessment under the Act.
- 31. Hearing of appeal.
- 32. Appeals against orders of Assistant Commissioner.
- 33. Power of revision.
- 33A. Appeal to the Appellate Tribunal.
- 34. Income escaping assessment.
- 35. Rectification of mistake.
- 36. * * * *
- 37. Power to take evidence on oath, etc.
- 38. Power to call for information.
- 39. Power to inspect the register of members of any company.
- 39A. General power to enter buildings or business premises for purposes of enquiry.
- 39B. Power to search, seize and impound accounts and documents in certain cases.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

- 40. Guardians, trustees and agents.
- 41. Administrator-General or Official Trustee, etc.
- 42. Non-residents.
- 43. Agents to include persons treated as such.
- 44. Liability in case of a discontinued firm or partnership.

CHAPTER V-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

- 44A. Liability to tax of occasional shipping.
- 44B. Return of profits and gains.
- 44C. Adjustment.

CHAPTER V-B.

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

- 44D. Recovery of tax from persons leaving the Union of Burma for good.

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

- 45. Tax when payable.
- 46. Mode and time of recovery.
- 47. Recovery of penalties.

CHAPTER VII.

REFUNDS.

Sections.

- 48. Refunds.
- 49. Power to make arrangements with foreign states to avoid double taxation.
- 49A. Power to set off amount of refunds against tax remaining payable.
- 49B. Power of representative of deceased person or person disabled to make claim on his behalf.
- 49C. Income-tax on companies' dividend deemed to have been paid by shareholder.
- 50. Limitation of claims for refund.

CHAPTER VIII.

OFFENCES AND PENALTIES.

- 51. Failure to make payments or deliver returns or statements or allow inspection.
- 52. False statement in declaration.
- 53. Prosecution to be at instance of Assistant Commissioner.
- 54. Disclosure of information by a public servant.

CHAPTER IX.

SUPER-TAX.

- 55. Charge of super-tax.
- 56. Total income for purposes of super-tax.
- 57. Non-resident partners and shareholders.
- 58. Application of Act to super-tax.

CHAPTER IX-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

- 58A. Definitions.
- 58B. The according and withdrawal of recognition.
- 58C. Conditions to be satisfied by a recognized provident fund.
- 58D. Power to relax restrictions of employer's contributions in certain cases.
- 58E. Annual accretion deemed to be income received.
- 58F. Exemption of annual accretion from income-tax.
- 58G. Exemption of accumulated balance from income-tax and super-tax.
- 58H. Deduction at source of income-tax payable on accumulated balances due.
- 58I. Accounts of recognized provident funds.
- 58J. Treatment of balances in newly recognized provident funds.

Sections.

- 58K. Treatment of fund transferred by employer to trustees.
- 58L. Provisions relating to rules.
- 58M. Application of this chapter.

CHAPTER IX-B.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

- 58N. Definitions.
- 58O. Approval and withdrawal of approval.
- 58P. Conditions for approval.
- 58Q. Application for approval.
- 58R. Exemption of superannuation fund from income-tax.
- 58S. Treatment of repaid contributions.
- 58T. Deductions from pay of, and contributions on behalf of, employee to be included in return under section 21.
- 58U. Liabilities of trustees on cessation of approval of fund.
- 58V. Particulars to be furnished in respect of superannuation funds.

CHAPTER X.

MISCELLANEOUS.

- 59. Power to make rules.
- 60. Power to make exemptions, etc.
- 61. Appearance by authorized representative.
- 62. Receipts to be given.
- 63. Service of notices.
- 64. Place of assessment.
- 65. Indemnity
- 66. Statement of case by Appellate Tribunal to High Court.
- 66A. Reference to be heard by Benches of High Court, and appeal to lie, in certain cases, to the Supreme Court.
- 67. Bar of suits in civil Court.
- 67A. Computation of period of limitation.
- 68. Act to have effect pending legislative provision for charge of income-tax.

THE BURMA INCOME-TAX ACT.

[INDIA ACT XI, 1922.] (1st April, 1922.)

¹[1. This Act extends to the whole of the Union of Burma ; 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.] Extent and application.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

²[(1) “agricultural income” means—

(a) any income from land which is used for agricultural purposes, and is either assessed to land revenue in the Union of Burma or subject to a local rate assessed and collected by officers of Government as such, derived by—

(i) agriculture, or

(ii) the performance by a cultivator of any process ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market, or

(iii) the sale by a cultivator of the produce raised by him in respect of which no process has been performed other than a process of the nature described in sub-clause (ii) ;

(b) any income derived from any building owned and occupied by the cultivator of any land, with respect to which or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (a) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the cultivator by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building :

Provided further, that nothing in the definition in this sub-section shall include any rent or revenue in money, kind or service receivable by a landlord on account of the use or occupation of land by a tenant, or by a tenant on account of the use or occupation of land by a sub-tenant.]

³[(2) “assessee” means a person by whom income-tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him ;]

(3) “Assistant Commissioner” means a person appointed to be an Assistant Commissioner of Income-tax under section 5 ;

¹ This section was substituted by Act LXXVII, 1953.

² This sub-section was substituted by Act XXXVI, 1946.

³ Substituted by Act L, 1954.

- (4) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;
- (5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5 ¹ [,] ² [and includes a person appointed to be an Additional Commissioner of Income-tax ;]
- 6) "company" means a company as defined in the Burma Companies Act, ³ [* * *] and includes ⁴ [any Board constituted under any Act of Parliament or any order made thereunder, and any foreign association] ⁵ [* * *], whether incorporated or not and whether its principal place of business is situated in the Union of Burma or not, which the Financial Commissioner may, by general or special order, declare to be a company for the purpose of this Act ;
- ⁶ [(6A) "earned income" means any income of an assessee not being ⁷ (a company, a local authority or a registered firm)—
- (a) which is chargeable under the head "Salaries" ; or
 - (b) which is chargeable under the head "Professional earnings" ; or
 - (c) which is chargeable under the head "Business", where the business is carried on by the assessee and, in the case of a firm, which is a share of its profits belonging to a partner actively engaged in the conduct of the business ; or
 - (d) which is chargeable under the head "Other Sources" if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person ; and includes any such income which, though it is the income of another person, is included in the assessee's income under the provisions of this Act, but does not include any such income which is exempt from tax under sub-section (2) of section 14 ⁸ (* * * * *) or under a notification issued under section 60.]

⁹ [(6AA)] "firm", "partner" and "partnership" have the same meanings respectively as in the ¹⁰ [Partnership Act] :

¹ Substituted by Act L, 1954.

² Inserted, *ibid.*

³ The words "or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession" were deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

⁴ Substituted by Act XXIX, 1954.

⁵ The words "carrying on business in the Union of Burma" were deleted by Act LXXVII, 1953.

⁶ Inserted by Act XXXVI, 1946.

⁷ Substituted by Act LXXVII, 1953.

⁸ The words "other than a share of the profits of a registered firm for the purpose of a refund under sub-section (2) of section 48," were deleted by Act L, 1954.

⁹ Renumbered by Act XXXVI, 1946.

¹⁰ Substituted by the Burma Laws (Adaptation) Act, 1940.

¹ [provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership ;]

¹ [(6B) "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 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) ;]

² [(6C) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under section 5 ;]

(7) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5 ;

(8) "Magistrate" means a Magistrate of the first class, or a Magistrate of the second class specially empowered by the President of the Union to try offences against this Act ;

(9) "person" includes a Hindu undivided family ;

(10) "prescribed" means prescribed by rules made under this Act ;

(11) "Previous year" means ³ [in respect of any separate source of income, profits and gains]—

- (a) the twelve months ending on the ⁴ [30th day of September] next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year

¹ Inserted by Act LXXVII, 1953.

² Substituted by Act L, 1954.

³ Inserted by Act XXXVI, 1946.

⁴ Substituted by Act XXI, 1945.

ending on any date other than the said ¹ [30th day of September], then at the option of the assessee the year ending on the day which his accounts have so been made up :

- ² [Provided that where an assessee has been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit ; or]
- (b) in the case of any person, business or company, or class of person, business or company, such period as may be determined by the Financial Commissioner or by such authority as he may authorize in this behalf ; ³ [or
 - (c) where a business or profession has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business or profession to the 30th day of September next following or to the last day of the period determined under clause (b), or, if the accounts of the assessee are made up to some other date than the 30th day of September and the case is not one for which a period has been determined by the Financial Commissioner under clause (b), then at the option of the assessee, the period from the date of the setting up of the business or profession to such other date :

Provided that when such other date does not fall between the setting up of the business or profession and the next following 30th day of September, it shall be deemed that there is no previous year ; and when the assessee is a partner in a firm, "previous year" in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm ;]

- (12) "principal officer", used with reference to a local authority or a company or any other public body or any association, means—
 - (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
 - (b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;
- (13) "public servant" has the same meaning as in the Penal Code ;

¹ Substituted by Act XXI, 1945

² Substituted by Act XXXVI, 1946.

³ Inserted by Act XXXVI, 1946.

- (14) "registered firm" means a firm registered under the provisions of section 26A ;
- (15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16 ; and¹ ["total world income" includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply ; and]
- (16) "unregistered firm" means a firm which is not a registered firm.

CHAPTER I.

CHARGE OF INCOME-TAX

3. Where any Act of the Union Parliament enacts that income-tax shall be charged for any year at any rate or rates,² [* * * * *] tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of ³ [the total income] of the previous year of every individual, Hindu undivided family, company, firm and other ⁴ [association of persons].

Charge of
income-tax.

⁵ [4. (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—

Application
of the Act.

- (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 :

¹ Inserted by Act L, 1954.

² The words "applicable to the total income of an assessee" were deleted by Act L, 1954.

³ Substituted *ibid*.

⁴ Substituted by Act XXXVI, 1946.

⁵ Substituted by Act LXXXVII, 1953.

⁶ The annual Finance Act fixes the rates at which income-tax is to be charged for the following 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.]

¹ [(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.]

(3) This Act shall not apply to the following classes of income :—

- (i) Any income derived from ~~property held under trust~~ or other legal obligation wholly for religious or charitable purposes ² [within the Union of Burma], and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act applies.

¹ Substituted by Act LXXVII, 1953.

² Inserted by Act LXXVII, 1953.

- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such provident fund.
- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.
- (vii) Any receipts 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.
- (viii) Agricultural income.
- (ix) Any income received by trustees on behalf of a recognized provident fund as defined in clause (a) of section 58A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

¹ [4A. For the purposes of this Act—

Residence.

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

¹ Inserted by Act LXXVII, 1953.

¹ [(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.]

CHAPTER II.

INCOME-TAX² AUTHORITIES.

*Income-tax
authorities.*

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

- (a) The Financial Commissioner,
- (b) Commissioners of Income-tax,
- ² [(c) ³[Additional] Commissioner of Income-tax,]
- ⁴ [(d)] Assistant Commissioners of Income-tax,
- ⁴ [(e)] Income-tax Officers,
- ⁵ [(f)] Inspectors of Income-tax.]

(2) * * * *

(3) The President of the Union may appoint a Commissioner of Income-tax for any area specified in the order of appointment.

⁶ [(4) The President of the Union may appoint as many Assistant Commissioners of Income-tax and Income-tax Officers as he may deem fit. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the President of the Union may direct and, where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, with the previous approval of the President of the Union by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner, and the Commissioner, respectively and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.]

¹ Substituted by Act XXIX, 1954.

² Inserted by Act LXXVII, 1953.

³ Substituted by Act XXIX, 1954.

⁴ Clauses (c) and (d) renumbered (d) and (e) respectively *ibid.*

⁵ Inserted by Act L, 1954.

⁶ Substituted by Act XXVIII, 1952.

¹ [(5) The President of the Union may appoint ² [an Additional] 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 income and in respect of such areas, and such other functions as the President of the Union may direct.]

³ (5a) The Commissioner may, subject to the rules and orders of the President of the Union regulating the conditions of service of persons in public services and posts, appoint as many Inspectors of Income-tax as may, from time to time, be sanctioned by the President of the Union.

(5b) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other Income-tax authority under whom they are appointed to work, and shall be subordinate to such officer or authority.

(5c) Subject to the rules and orders of the President of the Union regulating the conditions of service of persons in public services and posts, an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.]

(6) ⁴ [The ² [Additional] Commissioner of Income-tax appointed under sub-section (5) and the Assistant Commissioners of Income-tax] and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the area in which they perform their functions.

⁵ [(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.]

¹ [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 whole-time members

Appellate
Tribunal.

¹ Inserted by Act LXXVII, 1953.

² Substituted by Act XXIX, 1954.

³ Inserted by Act L, 1954.

⁴ Substituted by Act LXXVII, 1953.

⁵ Inserted by Act XXIX, 1954.

to exercise the functions conferred on the Appellate Tribunal by this Act :—

- (a) *Judicial member*.—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) *Accountant member*.—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) *Revenue member*.—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 that 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 authorized 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.

Transitory provisions consequent on the constitution of the Appellate Tribunal.

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

- (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.]

CHAPTER III.

TAXABLE INCOME.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

Heads of income chargeable to income-tax.

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits ¹ [* * *] in lieu of, or in addition to, any salary or wages, ² [which are due to him from, whether paid or not, or are paid by or on behalf of the Government], a local authority, a company or any other public body or association, or ³ [* * *] any private employer :

Provided that the tax shall not be payable in respect of any sum deducted ² [from the salary payable by or on behalf of the Government to any individual,

¹ The words "received by him" were omitted by Act XXXVI, 1946.

² Substituted *ibid.*

³ The words "by or on behalf of" were deleted *ibid.*

being a sum deducted in accordance with the conditions of his service] for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary ¹[:]

²[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.]

³[*Explanation 1.*]—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

⁴[*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.]

(2) Any income which would be chargeable under this head if paid in the Union of Burma shall be deemed to be so chargeable if paid to a citizen of the Union or any servant of the Government in any part of the Union of Burma ⁵[by or on behalf of the Government] or by a local authority established by the President of the Union.

Interest on
securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of the Union of Burma or any security of the Government of India or Pakistan enfaced for payment of interest in the Union of Burma, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

¹ Substituted by Act LXXVII, 1953.

² Inserted *ibid*

³ Renumbered by Act LXXVII, 1953.

⁴ Inserted *ibid*.

⁵ Substituted by Act XXXVI, 1946.

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest ¹ [on behalf of the assessee or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without the Union of Burma, unless in respect of interest which is so chargeable, tax has been paid or deducted under section 18, or unless there is a person in the Union of Burma who may be appointed an agent under section 43 in respect of such interest.]

² [* * * *]

³ [9. (1) The tax shall be payable by an assessee under the head Property. "Property" in respect of the *bonâ-fide* annual value of property consisting of any buildings or lands of which he is the owner (other than such portions of such property as he may occupy for the purposes of his business), or in respect of which he is entitled to receive any rent or revenue in money, kind or service, subject to the following allowances, namely :—

- (i) where the property is in the occupation of the assessee, or where it is let to a tenant and the assessee has undertaken to bear the cost of repairs, the amount paid on account thereof by the assessee;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the amount by which such value exceeds the rent paid by the tenant up to but not exceeding the amount expended by the tenant for *bonâ-fide* repairs to the property;
- (iii) the amount of any premium paid to ensure against risk of damage to or loss of the property or any crops to be raised or cattle to be reared therein;
- (iv) where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to a ground rent the amount of such ground rent; where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself, and where the assessee has taken loans under the Land Improvement Loans Act or the Agriculturists' Loans Act, the amount of any interest thereon actually paid by him in respect of the property ⁴ [:]

⁵ [Provided that no allowance shall be made in respect of any interest or annual charge payable without the Union of the Burma and chargeable under this Act except interest or a charge on which tax has been paid or from which

¹ Substituted by Act L, 1954.

² The second *pro* iso was deleted *ibid*.

³ Substituted by Act XXXVI, §1945.

⁴ Substituted by Act XXIX, 1954.

⁵ Inserted *ibid*.

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 ;]

- (v) any sums paid on account of land revenue in respect of the property ;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum ;
- (vii) in respect of vacancies, such sum as the Income-tax Officer may determine, having regard to the circumstances of the case.

¹ [* * * *]

(2) For the purposes of this section—

- (i) the expression “tenant” shall be deemed to include a sub-tenant ;
- (ii) the expression “annual value” shall be deemed to mean, in the case of buildings and land appurtenant thereto not being land used for agricultural purposes, the sum for which the property might reasonably be expected to let from year to year, and, in the case of other lands, including lands used for agricultural purposes, the sum realized on account of rent or revenue in money, kind or service after making the deduction of the sums actually paid by the assessee in respect of the land from which such rents are derived as follows, namely :—
 - (a) as rent to a superior landlord ;
 - (b) for any local rate or cess ;
 - (c) in respect of the maintenance of any irrigation or protective work constructed for the benefit of the land but not situated thereon ; and
 - (d) any other expenditure of the assessee, not being in the nature of capital expenditure or personal expenditure, and not being an allowance to be made from annual value under sub-section (1), laid out wholly and exclusively for the purpose of deriving such rent from such land :

Provided that in the case of buildings and land appurtenant thereto where the property is in the occupation of the assessee for the purposes of his own residence such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of total income of the assessee.]

²[(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.]

¹ The proviso was deleted by Act LXXVII, 1953.

² Inserted *ibid*.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

- (i) any rent paid for the premises in which such business is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used ;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed ;
- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid ¹ [:]

²[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 ;]

Explanation.—Recurring subscriptions paid periodically by share-holders or subscribers in such Mutual Benefit Societies as may be prescribed shall deemed to be capital borrowed within the meaning of this clause ;

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid ;
 - (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;
 - (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed ³ [:]
- ⁴ [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

¹ Substituted by Act XXIX, 1954.

² Inserted *ibid*.

³ Substituted by Act LXXVII, 1953,

⁴ Inserted *ibid*,

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 :]

Provided that—

- (a) the prescribed particulars have been duly furnished ;
 - (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and
 - (c) the aggregate of all such allowances made under this Act, ¹ [or any Income-tax Act formerly in force], shall in no case exceed the original cost to the assessee of the buildings machinery, plant, or furniture, as the case may be ;
- ²[(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 ;]
- ³ [(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 ⁴ [for which the building, machinery or plant] is actually sold or its scrap value :

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

¹ Substituted by the Burma Laws (Adaptation) Act, 1940.

² Inserted by Act LXXVII, 1953.

³ Substituted *ibid*.

⁴ Substituted by Act L, 1954,

¹ [Provided further that where the amount for which any building, machinery or plant is sold whether during the continuance of the business or after the cessation thereof exceeds the original cost as reduced by the aggregate of the depreciation allowances already given, so much of the excess as does not exceed the aggregate of the depreciation allowances already given shall be deemed to be profits of the previous year in which the sale took place ;]

(viiia) in respect of animals which have been used for the purposes of the business otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realized in respect of the carcasses or animals ;

² [(viiib) 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 ;]

(viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business ;

(viiiia) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

- (a) the pay of the employee and the conditions of his service ;
- (b) the profits of the business for the year in question ; and
- (c) the general practice in similar businesses ;

³ [(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 :]

Provided that nothing in clause (viii) or clause (ix) shall be deemed to authorize the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains :

² [Provided further that nothing in clause (ix) shall be deemed to authorize 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.]

¹ Substituted by Act L, 1954.

² Inserted by Act LXXVII, 1953.

³ Substituted *ibid*.

- (3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

Professional earnings.

11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

(2) Such profits or gains shall be computed after making the following allowances, namely—

- (i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee ;
- (ii) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses.

¹ (3) * * * *

Other sources.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee ²[.]

³ [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.]

Method of accounting.

13. Income, profits and gains shall be computed for the purposes of sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee :

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

¹ Sub-section (3) was deleted by Act LXXVII, 1953.

² Substituted by Act XXIX, 1954.

³ Inserted *ibid.*

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family. Exemptions of a general nature.

(2) The tax shall not be payable by an assessee in respect of—

¹ (a) * * *

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment; or

(c) any sum which he receives as his share of the profits or gains of an ² [association of persons], other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

15. ³ [(1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee (or) on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee, or on the life of a wife or husband of the assessee, or as a contribution to any provident fund to which the Provident Funds Act applies.] Exemption in the case of life insurances.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58F, exceed one-sixth of the total income of the assessee.

⁴ [15A. ⁵ [(1)] Income-tax shall not be payable by an assessee in respect of such portion, if any, of the ~~earned income~~ included in his total income as is directed by the Act of the Union Parliament fixing the rate or rates of tax for any year to be deducted in making an assessment for that year, and for the purposes of determining the rates at which income-tax (but not super-tax) is payable by the assessee for that year his income shall be deemed to be the total income reduced by the said portion.] Exemption portion of of earned income.

⁶ [(2) Any assessee not being a Hindu undivided family, company, firm and other association of persons who—

- (a) is resident in the Union of Burma in the year of assessment, or
- (b) being a salary earner is resident in the Union of Burma in the year in which income-tax falls to be deducted under sub-section (2) of section 18 from the assessee's estimated income chargeable under the head "Salaries" Exemption on account of allowance for wife and children.

¹ Clause (a) of sub-section (2) was deleted by Act LXXXVII, 1953.

² Substituted by Act XXXVI, 1946.

³ Substituted by Act L, 1954.

⁴ Inserted by Act XXXVI, 1946.

Renumbered by the Finance Act XXIX, 1953.

Inserted *ibid*.

proves to the satisfaction of the Income-tax Officer that the assessee—

- (i) in the case of a man, had any wife living with him or maintained by him during the previous year shall be allowed, for purposes of determining the income-tax but not super-tax payable by him, a deduction of kyats one thousand from his total income as defined in section 16, and
- (ii) maintained at any time within the previous year an unmarried child who was either under the age of eighteen years or was receiving full-time instruction at any university, college, school or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession shall be allowed, for purposes of determining the income-tax but not super-tax payable by the assessee, a deduction of kyats five hundred from the assessee's total income as defined in section 16, in respect of such child, and where such assessee maintained more than one such child a deduction of kyats four hundred for the second such child, a deduction of kyats three hundred for the third such child and a deduction of kyats two hundred for each subsequent child :

Provided that the provisions of sub-clause (i) above shall not be given effect to in any case where the wife in her own right or by her personal exertion was in receipt, during the relevant previous year, of a total income of more than kyats four thousand two hundred :

Provided further that the aggregate of the exemptions under sub-clause (ii) above shall not in any case exceed kyats one thousand five hundred ;

Explanation.—The expression “child” in sub-clause (ii) above includes a step-child or a child adopted in accordance with any statutory provision :

Provided further that the provisions of this sub-section shall not be given effect to in any assessment to be made for any year earlier than for the year ending on the thirtieth day of September 1954.]

Exemption
on account
of donations
for charita-
ble purposes.

¹ [**15B.** (1) The tax shall not be payable by an assessee in respect of any sums paid by him on or after the first day of October 1949 as donations to any institution or fund which is established in the Union of Burma for a charitable purpose and is approved by the Government for the purposes of this section :

Provided that the total of the sums so paid is not less than two hundred and fifty rupees :

Provided further that in the case of a company this exemption shall apply only in respect of the income-tax, and not in respect of any super-tax, payable by it.

¹ Inserted by Act IV, 1951.

Explanation.—In this section, “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

(2) The aggregate of any sums exempted under this section shall not exceed—

(a) one-twentieth in the case of a company, and one-tenth in any other case, of the assessee’s total income as reduced by any portion thereof exempt from tax under any other provision of this Act, or

(b) two hundred and fifty thousand rupees, whichever is less.

(3) The amount by which the tax payable by an assessee is reduced on account of an exemption under this section shall not in any case exceed half the amount in respect of which the exemption is allowed under this section.]

¹ [15C. (1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent per annum on the capital employed in the undertaking computed in accordance with such rules as may be made in this behalf by the Financial Commissioner.

Exemption from tax of newly established industrial undertakings.

(2) This section applies to any industrial undertaking which—

(i) is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery or plant used in a business which was being carried on or before the 1st day of October, 1953 ;

(ii) has begun or begins to manufacture or produce articles in any part of the Union of Burma at any time within a period of six years from the 1st day of October, 1953, or such further period as the President of the Union may, by notification, specify with reference to any particular industrial undertaking ;

(iii) employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power :

Provided that the President of the Union may, by notification, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

(3) The profits or gains of an industrial undertaking to which this section applies shall be computed in accordance with the provisions of section 10.

(4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which the tax is not payable under this section.

¹ Inserted by Act L, 1954.

(5) Nothing in this section shall affect the application of section 23A in relation to the profits or gains of an industrial undertaking to which this section applies, and for the purposes of that section, the expression "assessable income" shall be deemed to include the profits or gains in respect of which the tax is not payable under this section.

(6) The provisions of this section shall apply to the assessment for the financial year next following the previous year in which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding.]

Exemptions
and exclu-
sions in
determining
the total
income.

16. ¹ [(1) In computing the total income of an assessee—

- (a) any sums exempted under the first proviso to sub-section (1) of section 7, sub-section (2) of section 14, section 15, section 15B and section 15C shall be included and any sum exempted under sub-sections (1) and (2) of section 15A shall also be included except for the purpose of determining the rates at which income-tax (but not super-tax) is payable by the assessee to whom the exemption is given ;
- (b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year :

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24.]

² [(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

¹ Substituted by Act I, 1954.

² Substituted by Act LXXVII, 1953.

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.]

(3) ¹ [* * * * *] In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

- (i) from the membership of the wife in a firm of which her husband is a partner ;
- (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner ;
- (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart ; or
- (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual ; and

(b) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred to the association by such individual.

² [17. (1) Where there is included in the total income of an assessee any income exempted from tax by or under the provisions of this Act, the income-tax ~~excluding super-tax~~ payable by the assessee shall be an amount bearing to the total amount of income-tax ~~excluding super-tax~~ which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.]

Determina-
tion of tax
payable
where por-
tion of total
income is
exempt.

³ [(2) Where there is included in the total income of any assessee any income exempted from tax under section 15B ⁴ [or under section 15C], the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been exempted, the same proportion as the total income less the portion so exempted bears to the total income.]

⁵ [(3) Where the amount of the total income of any assessee is deemed to be the total income reduced under the provisions of section 15A (by an allowance for earned income and for wife and children), the expression "total income" in this section shall, for the purpose of determining the amount of income-tax (but ~~not super-tax~~) payable by the assessee be deemed to refer to his total income so reduced.]

¹ The words "As respects income chargeable to income-tax for any year ending after the 31st March, 1937" added at the beginning of the sub-section by the Burma Laws (Adaptation) Act, 1940, were omitted by Act XXI, 1945.

² Substituted by Act XXXVI, 1946.

³ Inserted by Act IV, 1951.

⁴ Inserted by Act L, 1954.

⁵ This sub-section was substituted by Act XXVI, 1946, as sub-section (2) but was re-numbered as sub-section (3) by Act IV, 1951.

⁶ Substituted by the Finance Act XXIX, 1953.

Determina-
tion of tax
payable in
certain
special cases.

¹ [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—

- (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 ² [December in that year, or where the first occasion on which he is so assessable falls during the year ending on the 30th day of September 1954, before the 31st day of August 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.]

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

Payment by
deduction at
source.

18. (1) * * * *

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax ³ [and super-tax] on the amount payable ³ [at a rate representing the average

¹ Inserted by Act XXIX, 1954.

² Substituted by Act L, 1954.

³ Substituted by Act XXXVI, 1946.

of the rates applicable to the estimated total income of the assessee under this head] :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2A) Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of the Union of Burma by or on behalf of ¹ [the Government], and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

² (2B) 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 ³ [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.]

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Government of the Union of Burma, at the time of payment deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate :

⁴ [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.]

¹ Substituted by Act XXXVI, 1946.

² Inserted by Act LXXVII, 1953.

³ Substituted by Act XXIX, 1954.

⁴ Substituted by Act LXXVII, 1953.

¹ [(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 ² [under the first 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).]

¹ Substituted by Act XXIX, 1954.

² Substituted by Act L, 1954.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

¹ [(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 ² [on the production of the certificate furnished under sub-section (9) or section 20, as the case may be] 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 ³ (:)]

² [Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted or in respect of any sum by which the dividend has been increased under sub-section (2) of section 16, may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income.]

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of the Union of Burma ⁴ [* * * *].

(7) If any such person does not deduct and pay the tax as required by or under this section, ¹ (he and in the cases specified in ⁵ [sub-section (3D)] the company of which he is the principal officer shall), without prejudice to any other consequences which ² [he or it may incur], be deemed to be an assessee in default in respect of the tax :

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

¹ Substituted by Act LXXVII, 1953.

² Inserted by Act L, 1954.

Substituted *ibid.*

⁴ The words "or as the Financial Commissioner directs" were deleted by Act XXXVI, 1946.

⁵ Substituted by Act XXIX, 1954.

(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3A), (3B), ¹[(3C) or (3D)] shall at the time of payment of interest or dividends furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

²[*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.]

Advance
payment of
tax.

³[18A. (1) (a) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income-tax Officer may on or after the 1st day of October in any financial year by order in writing, require an assessee to pay quarterly to the credit of the Government of the Union of Burma on the 15th day of December, 15th day of March, 15th day of June and 15th day of September in that year respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year commencing on or after the 1st day of October 1944 in respect of which he has been assessed, if that total income exceeded seven thousand rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income ⁴ [or, in cases where under the provision of section 17A both income-tax and super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income :]

¹ Substituted by Act XXIX, 1954.

² Inserted *ibid.*

³ Inserted by Act XXXVI, 1946.

⁴ Inserted by Act L, 1954.

Provided that, where the previous year of the assessee in respect of any source of income ends after the 30th day of June and before the 31st day of October, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of March, the 15th day of June and the 15th day of September, respectively :

¹[Provided further that, if the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than that for which the assessee's last assessment has been completed, his share in the profits of the firm shall, for the purposes of this sub-section, be included in his total income on the basis of the latest assessment of the firm :]

Provided further that, if after the making of an order by the Income-tax Officer and before the 15th day of August of the financial year an assessment of the assessee ¹[or of the registered firm of which he is a partner] is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order ; but if the amount already paid exceeds the tax determined on the revised basis, the excess shall be refunded.

(b) If the notice of demand issued under section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of those dates as fall after the date of service of the notice of demand, or in one sum on the 15th day of September if the notice is served after the 15th day of June.

(2) If an assessee who is required to pay tax by an order under sub-section (1) estimates, at any time before the last instalment is due, that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him, calculated in the manner laid down in sub-section (1), on that part of his income for such period, and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1) (a) as have not expired, or in one sum if only the last of such dates has not expired :

Provided that, the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in sub-section (1) (a) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

¹ Inserted by Act L, 1954.

(3) Any person who has not hitherto been assessed in respect of the income of a previous year commencing on or after the 1st day of October 1944 shall, before the 15th day of September in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed seven thousand rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2) :

Provided that, where his total income includes agricultural rents he shall, before the 15th day of June in each financial year, send to the Income-tax Officer an estimate of the tax payable by him on such rents for the said previous year calculated in the manner laid down in sub-section (1) and shall pay the amount of such tax on the 15th day of June in one sum, and the balance (if any) of the estimated tax payable by him aforesaid in accordance with the foregoing provisions of this sub-section.

(4) Where the income to which sub-section (1), (2) or (3) applies includes income from agricultural rents or any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the advance payments of tax become due, he may defer payment of tax on such inclusions to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred :

Provided that, if the tax of which the payment is deferred is not paid within 15 days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the tax shall be payable with six per cent simple interest per annum from the date of such receipt or adjustment to the date of payment of the tax.

(5) The Government shall pay on any amount paid under this section simple interest at the rate of two per cent per annum¹ [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 assessment] (hereinafter called the "regular assessment"), made under section 23 of the income, profits and gains of the previous year for an assessment for the year next following the year in which the amount was payable :

Provided that, on any portion of such amount which is refunded under the foregoing provisions of this section, interest shall be payable only up to the date on which the refund was made² [:]

³ [Provided further that for any period beginning with the 1st day of October, 1953, interest shall be payable only on the amount by

¹ Substituted by Act XXIX, 1954.

² Substituted by Act L, 1954,

³ Inserted *ibid*.

which the aggregate sum of any instalments paid during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder :—

- (i) in respect of such instalments paid in any financial year before the said date, from the said date to the date of the regular assessment ;
- (ii) in respect of such instalments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment.]

(6) Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply, and so far as it is not due to variations in the rates of tax made by the Finance Act/enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent per annum from the 1st day of July in the financial year in which the tax was paid, up to the date of the said regular assessment, shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent :

¹ [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 :]

Provided further that, where a business or profession is newly set up and is assessable on the income, profits and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be computed from the 1st day of October of the said financial year.

(7) Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

- (a) under sub-section (2) or sub-section (3) underestimated the tax payable by him and thereby reduced the amount payable in any of the first three instalments, or
- (b) under sub-section (4) wrongly deferred the payment of tax on a part of his income,

¹ Substituted by Act XXIX, 1954.

he may direct that the assessee shall pay simple interest at the rate of six per cent per annum in the case referred to in clause (a) for the period during which the payment was deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate tax actually paid under this section during the year, and in the case referred to in clause (b) for the period during which the payment of tax was wrongly deferred on the amount of which the payment was so deferred :

Provided that, for the purposes of this sub-section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months

(8) Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

(a) has furnished under sub-section (2) or sub-section (3) estimates of tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish the return of his total income; and the provisions of section 28, so far as may be, shall apply accordingly :

Provided that the amount of penalty leviable shall, in the case referred to in clause (a), be a sum not exceeding the amount by which the tax actually paid during the year under the provisions of this section falls short of the tax that should have been paid by the assessee under sub-section (1) or eighty per cent of the tax determined on the basis of the regular assessment, as modified in the manner provided in sub-section (6), whichever is the less, and, in the case referred to in clause (b), be a sum not exceeding the said eighty per cent.

(10) (a) If an assessee does not pay on the specified date any instalment of tax that he is required to pay under sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(b) If any assessee has sent under sub-section (2) or sub-section (3) an estimate or a revised estimate of the tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in

sub-section (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments :

Provided that the assessee shall not, under clause (a) or (b), be deemed to be in default in respect of any amount of which the payment is deferred under sub-section (4) until after the date communicated by him to the Income-tax Officer under that sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.

(12) (a) The tax shall not be payable by an assessee in respect of any sum of interest which he receives under sub-section (5) and such sum shall not be included in computing his total income.

(b) In computing the total income of an assessee no allowance shall be made for any interest payable by him under sub-section (4), (6) or (7).]

¹ [19. In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct.] Payment in other cases.

19A. The principal officer of every company shall, on or before the ² [15th day of December] in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder. Supply of information regarding dividends.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed. Certificate by company to shareholders receiving dividends.

20A. The person responsible for paying any interest not being "Interest on securities" shall, on or before the ² [fifteenth day of December] in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate Supply of information regarding interest.

¹ Substituted by Act L, 1954.

² Substituted by Act XXI, 1945.

interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person.

Annual
return,

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the ¹ [30th day of September] each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form ² [and verified in the prescribed manner], a return in writing showing—

- (a) the name and, so far as it is known, the address of every person who was receiving on the said ¹ [30th day of September], or has received ² [or to whom was due] during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head “Salaries” of such amount as may be prescribed ;
- (b) the amount of the income so received ² [or so due] by each such person, and the time or times at which the same was paid ² [or due, as the case may be] ;
- (c) the amount deducted in respect of income-tax ³ [and super-tax] from the income of each such person.

Return of
income,

[22. (1) The Income-tax Officer shall, on or before the 1st day of January in each year, give notice, in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return in the prescribed form, and verified in the prescribed manner, setting forth along with such other particulars as may be required by the notice, his total income ² [and total world income] during that year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

(2) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him, requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form, and verified in the prescribed manner, setting forth, along with such other particulars as may be provided for in the notice, his total income ² [and total world income] during the previous year.

¹ Substituted by Act XXI, 1945.

² Inserted by Act L, 1954.

³ Inserted by Act XXXVI, 1946.

⁴ Substituted *ibid*.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

¹ [(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 ² [the heads 'Business and Professional earnings'], 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).]

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce or cause to be produced, ³ [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:]

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

23. (1) If the Income-tax Officer is satisfied ⁴ [without requiring the presence of the assessee or the production by him of any evidence] that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return. Assessment.

(2) If the Income-tax Officer ² [is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such

¹ Inserted by Act XXIX, 1954.

² Substituted by Act L, 1954.

³ Substituted by Act XXIX, 1954.

⁴ Inserted by Act L, 1954.

person] a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's Office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) ¹ [If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section,] or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment ² [and determine the sum payable by the assessee on the basis of such assessment,] and, ¹ [in the case of a firm may refuse to register it or may cancel its registration if it is already registered] :

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

³ [(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 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 :]

⁴ [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 which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm.]

Power to
assess
individual
members of
certain
firms.

23A. (1) Where the Income-tax Officer is satisfied that any firm or other ¹ [association of persons] carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof,

¹ Substituted by Act XXXVI, 1946.

² Inserted *ibid*.

³ Inserted by Act LXXVII, 1953.

⁴ Substituted by Act XXIX, 1954.

and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

associations
and
companies.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

¹ (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 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:]

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested ¹ [:]

² [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

¹ Substituted by Act LXXVII, 1953.

² Inserted *ibid*.

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.]

Explanation.—For the purpose of this sub-section,—

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which those provisions apply ;
- (b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in ¹ [* * * * *] the Union of Burma or are in fact freely transferable by the holders to other members of the public ;
- (c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons ;
- (d) “ nominee ” means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or ² [association of persons] makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1) such tax may be recovered from the firm or association, as the case may be.

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

¹ The words “ India or Pakistan or ” were deleted by Act XXIX, 1954.

² Substituted by Act XXXVI, 1946.

(iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum for the purposes of Chapter VI.

(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

¹ [(6) When a company is a shareholder deemed under sub-section (2) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.]

² [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.

¹ [(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the President of the Union may, by notification, specify in that behalf.]

³ [(4)] There shall be no right of appeal against a provisional assessment made under sub-section (1).

³ [(5)] 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.

³ [(6)] 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.

¹ Inserted by Act L, 1954.

² Inserted by Act XXIX, 1954.

³ Renumbered by Act L, 1954.

¹ [(7)] 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 provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

¹ [(8)] 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.

Set-off of loss
in computing
aggregate
income.

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year ² [:]

³ [Provided that in computing the profits and gains chargeable under ⁴ (the heads "Business and Professional earnings") 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 :

¹ Renumbered by Act L, 1954.

² Substituted by Act LXXVII, 1953.

³ Inserted *ibid.*

⁴ Substituted by Act L, 1954.

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.]

¹ [(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 ² [30th September 1953, in any business, profession or vocation] and the loss cannot be wholly set off under sub-section (1), ² [so much of the loss as is not so set off or the whole loss where the assessee had no other head of income] 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 the 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 ³ [clause (b) of sub-section (1) 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 ² [the said clause (b)], and where any person carrying on any business, profession or

¹ Substituted by Act LXXVII, 1953.

² Substituted by Act L, 1954.

³ Inserted *ibid.*

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.]

¹ [(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.]

Assessment
in case of
departure
from the
Union of
Burma.

24A. ² [(1) When it appears to the Income-tax Officer that any person may leave the Union of Burma during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from the Union of Burma, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from the Union of Burma. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made :

Provided that nothing herein contained shall authorize an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been under-assessed or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but in respect of which he is debarred from issuing a notice under section 34.]

(2) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the ² [relevant period referred to in the first sentence of] sub-section (1) and his estimated total income for the period from the expiry

¹ Inserted by Act LXXVII, 1953.

² Substituted by Act L, 1954.

of the last such completed previous year to the probable date of his departure ; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

Tax of deceased person payable by representative.

¹ [(2) Where a person dies before the giving of the notice referred to in sub-section (1) of section 22, or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.]

25. (1) Where any business, profession or vocation ² [* * * *] is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance, in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

Assessment in case of discontinued business.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

¹ Substituted by Act XXXVI, 1946.

² The words "on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918" were deleted *ibid*.

1 [* * * * *]

² [(3)] Where an assessment is to be made under sub-section (1) ³ [* * * * *], the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or ~~in the case of a firm, on any person who was a member of such firm~~ at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment
after
partition of a
Hindu
undivided
family.

25A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed ⁴ [or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation,] the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it ; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23 :

Provided that all the separated members and groups of members ⁴ [whose joint family property has been partitioned] shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

¹ Sub-section (3) was deleted by Act XXXVI, 1946.

² Sub-section (4) renumbered (3) *ibid.*

³ The words " or sub-section (3) " were deleted *ibid.*

⁴ Inserted by Act L, 1954.

¹ [26. (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 : Change in constitution of a firm.

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 : Change of ownership of business.

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] ²[.] ³[and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.]

26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under 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. Procedure in registration of firms.

(2) The application shall be made by such person or 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.

27. Where an assessee ⁴ [* * * *] within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by Cancellation of assessment when cause is shown.

¹ Substituted by Act LXXVII, 1953.

² Substituted by Act L, 1954.

³ Inserted *ibid.*

⁴ The words "or, in the case of a company the principal officer thereof," were deleted *ibid.*

sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Penalty for concealment of income or improper distribution of profits.

28. ¹ [(1) If the Income-tax Officer, the Assistant Commissioner or ² [the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that any person—

- (a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34, or has, without reasonable cause, failed to furnish it within the time allowed and in the manner required by such notice, or
- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or
- (c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

² [he or it] may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income :

Provided that—

- ³ [(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 ;]
- (b) where a person has failed to comply with a notice under sub-section (2) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;
- (c) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in the Union of Burma for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him] ² [;]
- ⁴ [(d) When the person liable to penalty is a registered firm so that he amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total

¹ Substituted by Act XXXVI, 1946.

² Substituted by Act L, 1954.

³ Substituted by Act LXXVII, 1953.

⁴ Inserted by Act L, 1954.

income, and, in the cases referred to in clauses (b) and (c), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm.]

(2) If the Income-tax Officer, the Assistant Commissioner or ¹[the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, ¹[he or it] may direct that such partner shall, ²[in addition to the income-tax and super-tax, if any, payable by him], pay by way of penalty a sum ²[not exceeding the amount of income-tax and super-tax] which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or ¹[the Appellate Tribunal on making] an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

¹ [29. When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable.] Notice of demand.

³ [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 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 Appeal against assessment under the Act.

¹ Substituted by Act L, 1954.

² Substituted by Act XXXVI, 1946.

³ Substituted by Act LXXVII, 1953.

under section 27, or objecting to any order under sub-section (2) of section 25 or section 25A ¹[or sub-section (2) of section 26] or section 28 made by an Income-tax Officer ¹[or objecting to any penalty imposed by an Income-tax Officer under sub-section (1) of section 46], or objecting to a refusal of an Income-tax Officer to allow a claim to a refund ¹[under section 48] or to the amount of the refund allowed by the Income-tax Officer ¹[under that section], 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 :

¹ [Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid :]

Provided ¹ [further] 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 ¹ [a member of a firm or other association of persons or] 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 ² [sub-section (3B)] 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 ¹ [of total income on which the determination under sub-section (5) of section 23 was based and the apportionment thereof between the several partners or] 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 ² [under sub-section (1) or 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.

¹ Inserted by Act L, 1954.

² Substituted *ibid*,

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

¹ [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.] Hearing of appeal.

(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 28,
 - (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.

¹ Substituted by Act LXXVII, 1953.

(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 authorize 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.]

Appeals
against
orders
of Assistant
Commissioner.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

Power of
revision.

[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 ² [four years] previously.]

Appeal to the
Appellate
Tribunal.

¹ **[33A.]** (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or section 31 may appeal to the Appellate

¹ Substituted by Act LXXXVII, 1953.

² Substituted by Act XXIX, 1954.

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 ¹ [:]

² [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.]

(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 authorize 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.]

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year ³ [or has been under-assessed] or has been assessed at too low a rate ³ [or has been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed], the Income-tax Officer may, at any time within ⁴ [four years] of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or

Income
escaping
assessment.

¹ Substituted by Act XXIX, 1954.

² Inserted *ibid*.

³ Inserted by Act L, 1954

⁴ Substituted by Act LXXVII, 1953.

any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, ¹ [or recompute the loss or depreciation allowance ;] and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

Rectification
of mistake.

35. ² [(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 ³ [the appeal, revision, assessment or refund], 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 ¹ [or reducing a refund] 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.]

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment ¹ [or reducing a refund], the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

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

⁵ [(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

¹ Inserted by Act L, 1954.

² Substituted by Act, LXXVII, 1953.

³ Substituted by Act L, 1954.

⁴ Inserted by Act LXXVII, 1953.

⁵ Inserted, by Act XXIX, 1954.

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.]

¹ [(6) Where the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or where any business profits tax has been assessed after the completion of the corresponding assessment for income-tax [whether before or after the commencement of the Burma Income-tax (Second Amendment) Act, 1954] and in consequence thereof it is necessary to re-compute the total income of the assessee chargeable to income-tax, such re-computation 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 accordingly, the period of four years referred to in that sub-section being computed from the date of the order making or modifying the assessment of such business profits tax.

Explanation.—For the purposes of sub-section (6), where the assessee is a firm, the provisions of sub-section (5) shall also apply as they apply to the rectification of the assessment of the partners of the firm.

(7) Where the assessment of a company in whose case an order under section 23A has been made is modified in appeal, revision or any other proceeding or the order under section 23A is cancelled or varied, and in consequence thereof it is necessary to re-compute the total income of the shareholders, such re-computation 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 a company.]

² [36. * * * *]

37. ³ [(1)] The Income-tax Officer, ⁴ [Assistant Commissioner, Commissioner and Appellate Tribunal] shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure when trying a suit in respect of the following matters, namely :—

Power to take evidence on oath, etc.

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents ; and
- (c) issuing commissions for the examination of witnesses ;

and any proceeding before an Income-tax Officer, ⁴ [Assistant Commissioner or Commissioner or Appellate Tribunal] under this Chapter shall be deemed to be a “judicial proceeding” within the meaning of sections 193 and 228 and for the purposes of section 196 of the Penal Code.

¹ [(2) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

¹ Inserted by Act L, 1954.

² Section 36 was deleted by Act XXIX, 1954.

³ Renumbered by Act L, 1954.

⁴ Substituted *ibid*.

Provided that an Income-tax Officer shall not—

- (a) impound any books of account or other documents without recording his reasons for so doing ; or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.]

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses ;
- ¹ [(3) require any person whom he has reason to believe to be engaged in a business or profession to furnish him with a return containing particulars of the location and style of the principal place wherein he carries on the business or profession and of any branches thereof, the names and addresses of his partners, if any, in such business or profession and the extent of his own share and the shares of all such partners in the profits of the business or profession and any branches thereof.]

Power to inspect the register of members of any company.

39. The Income-tax Officer or Assistant Commissioner, or any person authorized in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

General power to enter buildings or business premises for purposes of enquiry.

² [39A. The Income-tax Officer or the Assistant Commissioner of Income-tax shall have power—

- (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

¹ Substituted by Act XXXVI, 1946.

² Inserted by Act XXIX, 1954.

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 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—

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

- (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.]

CHAPTER V.

LIABILITY IN SPECIAL CASES.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of the Union of Burma (all of which persons are hereinafter in this section included in the term "beneficiary") being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in the Union of Burma, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Guardians, trustees and agents.

41. In the case of income, profits or gains chargeable under this Act which are received by the Administrator-General or Official Trustee, or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all provisions of this Act shall apply accordingly.

Administrator-General or Official Trustee, etc.

Non-resi-
dents.

42. (1) In the case of any person residing out of the Union of Burma, all ¹ [income,] profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection ² [in the Union of Burma, or through or from any property in the Union of Burma, or through or from any asset or source of income in the Union of Burma, or through or from any money lent out on interest and brought into the Union of Burma in cash or kind,] shall be deemed to be income accruing or arising within the Union of Burma, and shall be chargeable to income-tax ³ [either in his name or in the name of his agent, and in the latter case] such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Provided that ⁴ [the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that] any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within the Union of Burma.

(2) Where a person not resident in the Union of Burma, ⁵ [* * * * *] carries on business with a person resident in the Union of Burma, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom, or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

⁶ [(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.]

Agents to
include
persons
treated as
such.

43. Any person employed by or on behalf of a person residing out of the Union of Burma, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

¹ Inserted by Act XXXVI, 1946.

² Substituted *ibid.*

³ Substituted by Act L, 1954.

⁴ Inserted *ibid.*

⁵ The words " and not being a British subject or a firm or company constituted within His Majesty's Dominions or a branch thereof " were deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

⁶ Substituted by Act LXXVII, 1953.

¹[Provided that where transactions are carried on in the ordinary course of business through a broker in the Union of Burma in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal, such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :]

Provided ¹ [further] that no person shall be deemed to be the agent of a non-resident person unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

² [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.]

Liability in case of a discontinued firm or partnership.

CHAPTER V-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of the Union of Burma and carries on business in the Union of Burma in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Liability to tax of occasional shipping.

44B (1) Before the departure from any port in the Union of Burma of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

Return of profits and gains.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such

¹ Inserted by Act L, 1954.

² Substituted by Act LXXVII, 1953.

accounts or documents as he may require, and ¹ [one-sixth] of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorized to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

44 C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, ² [in the year] following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax, and the difference between the sum so paid and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

³ [CHAPTER V-B].

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

Recovery of tax from persons leaving the Union of Burma for good.

44 D. (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 thousand.

¹ Substituted by Act XXIX, 1954.

² Substituted by Act XXXVI, 1946.

³ Inserted by Act LXXVII, 1953.

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.

(3) 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 rules¹ 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.

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

45. Any amount specified as payable in a notice of demand under sub-section (4) of section 23A, or under section 29, or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30² [* * * *], the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of. Tax when payable.

46 (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty. Mode and time of recovery.

(1A) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue :

¹ For such rules see *Burma Gazette*, 1954, Part I, page 3.

² The words “or under section 33A” were deleted by Act XXIX, 1954.

Provided that, without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have ¹ [* * * *] the powers which under the Code of Civil Procedure a Civil Court has ¹ [* * * *] for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the Union of Burma, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries", the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Government of the Union of Burma ² [* * * *]

³ [(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.

¹ The words "in respect of the attachment and sale of debts due to the assessee" and the words, "in respect of the attachment and sale of debts due to a judgment debtor" were deleted by Act L, 1954.

² The words "or as the Financial Commissioner directs" were deleted by Act XXXVI, 1946.

³ Inserted by Act XXIX, 1954.

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.]

(6) The President of the Union may direct, with respect to any specified area, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of ¹ [the financial year] in which any demand is made under this Act :

² [Provided that the period of one year herein referred to shall—

- (i) where an assessee has been treated as not being in default under section 45 as long as his appeal is undisposed of, be reckoned from the date on which the appeal is disposed of ;
- (ii) where recovery proceedings in any case have been stayed by any order of a Court, be reckoned from the date from which the order is withdrawn ;
- (iii) where the date of payment of tax has been extended by an income-tax authority, be reckoned from the date up to which the time for payment had been extended ;
- (iv) where the sum payable is allowed to be paid by instalments, from the date on which the last of such instalments was due :

Provided further that nothing in the foregoing proviso shall have the effect of reducing the period within which proceedings for recovery can be commenced, namely, after the expiration of one year from the last day of the financial year in which the demand is made.

Explanation.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the

¹ Substituted by Act XXXVI, 1946.

² Substituted by Act L, 1954.

period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode.]

Recovery of
penalties.

47. Any sum imposed by way of penalty under the provisions of ¹ [sub-section (9) of section 18A], sub-section (2) of section 25, section 28 or sub-section (1) of section 46 ¹ [and any interest payable under the provisions of sub-section (4), (6), (7) or (8) of section 18A] shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII.

REFUNDS.

Refunds.

² [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 authorize 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.]

48A. ³ [* * * *]

¹ Inserted by Act XXXVI, 1946.

² Substituted by Act LXXVII, 1953

³ Section 48A was deleted *ibid.*

¹[49. The President of the Union may, by ²notification, declare that arrangements specified in such notification have been made with the Government of any foreign state with a view to avoiding double taxation in relation to income-tax imposed by this Act and by the laws of that foreign state; and upon such declaration the said arrangements shall, notwithstanding anything contained elsewhere in this Act, have effect so far as they relate to such avoidance.]

Power to make arrangements with foreign States to avoid double taxation.

49A. Where under any of the provisions of this Act a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount ³[against the tax, interest or penalty], if any, remaining payable by the person to whom the refund is due.

Power to set off amount of refunds against tax remaining payable.

49B. Where, through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 ⁴[* * *] or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Power of representative of deceased person or person disabled to make claim on his behalf.

⁵[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.]

Income-tax on companies' dividend deemed to have been paid by shareholder.

³[50. No claim to any refund of income-tax or ~~super-tax~~ under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into the Union of Burma.]

Limitation of claims for refund.

50A. ⁶[* * * *]

¹ Substituted by Act XXIX, 1952.

² For such notification see *Burma Gazette*, 1953, Part I, page 298.

³ Substituted by Act L, 1954.

⁴ The words "or 48A" were deleted by Act XXIX, 1954.

⁵ Inserted *ibid.*

⁶ Section 50A was deleted by Act LXXVII, 1953.

CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to
make pay-
ments or
deliver
returns or
statements
or allow
inspection.

51. If a person fails without reasonable cause or excuse—

- (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;
- (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished ;
- (c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, ¹ [sub-section (2) of] section 22, or section 38 ;
- (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice ;
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39 ;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

False state-
ment in
declaration.

² [52. (1) If a person makes a statement in a verification mentioned in section 19A or section 20A ³ [or section 21] 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 (4) 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.]

Prosecution
to be at
instance of
Assistant
Commis-
sioner.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

Disclosure of
information
by a public
servant.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Evidence

¹ Inserted by Act XXXVI, 1946.

² Substituted by Act LXXVII, 1953.

³ Inserted by Act L, 1954.

Act, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine :

¹ [Provided that nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under the Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act ; or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary ² [or desirable] to disclose the same to him for the purposes of this Act ; or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand ; or
- (d) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Burma Stamp Act to impound an insufficiently stamped document ; or
- (e) of any such particulars to a Civil Court in any suit or proceeding to which Government ² [or any income-tax authority] is a party, which relates to any matter arising out of any proceeding under this Act ² [or under any other law for the time being in force authorizing any income-tax authority to exercise any powers thereunder] ; or
- (f) of any such particulars to the Auditor-General for the purpose of enabling him to discharge his functions under the Constitution ; or
- (g) of any such particulars to any officer appointed by the Auditor-General to audit income-tax receipts or refunds ; or
- (h) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to an officer appointed to hold such inquiry, or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of any such inquiry ; or
- (i) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority

¹ Substituted by Act XXVIII, 1952.

² Inserted by Act L, 1954.

- referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section ; or
- (j) of such facts, to an officer of a State Government, as may be necessary for the purpose of enabling that Government to levy or realize any tax imposed by it ; or
 - (k) of such facts, to any authority exercising powers under the Sea Customs Act, or any other Act imposing a duty of Excise, as may be necessary for enabling it duly to exercise such powers ; or
 - (l) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established ; or
 - (m) of such particulars to the Union Bank of Burma as are required by that Bank to enable it to compile financial statistics of international investments and balance of payments ; or
 - (n) of such information as may be required by any officer or department of the Union Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant ; or
 - (o) of any such particulars to the President of the Union where he considers that it is necessary to disclose the same to him for purposes of satisfying himself, in the interests of the revenue, whether the general provisions of the Act have been complied with :]

Provided further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under ¹ [section 25A or] section 26A, or to the giving of evidence by a public servant in respect thereof :

Provided further that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

Charge of
super-tax

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm

¹ Inserted by Act L. 1954.

or other ² [association of persons] not being a registered firm ¹ [or the partners of the firm or members of the association individually,] an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by * Act of the Union Parliament :

Provided that, where the profits and gains of an unregistered firm ¹ [or other association of persons not being a company] have been assessed to super-tax, super-tax shall not be payable by ³ [a partner of the firm or a member of the association, as the case may be,] in respect of the amount of such profits and gains which is proportionate to his share ² [:].

⁴ [Provided further that where there is included in the total income of an assessee having a share in an unregistered firm ¹ [or other association of persons not being a company] 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.]

56. ⁵ [Except in cases to which section 15A applies and] subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other ² [association of persons] shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

Total income
for purposes
of super-tax.

57. (1) In the case of any person residing out of the Union of Burma who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in the Union of Burma shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

Non-resident
partners and
shareholders.

(2) Where any person pays any tax under the provisions of this section on account of another person who is residing out of the Union of Burma, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident person under the provisions of sections 42 and 43.

* See the annual Finance Acts.

¹ Inserted by Act L, 1954.

² Substituted by Act XXXVI, 1946.

³ Substituted by Act L, 1954.

⁴ Inserted by Act LXXVII, 1953.

⁵ Inserted by Act XXXVI, 1946.

Application
of Act to
super-tax.

58. (1) All the provisions of this Act relating to the charge, assessment, collection and recovery of income-tax, except those contained in section 3, ¹ [the first proviso] to sub-section (1) of section 7, ² [* * * *], sub-section (2) of section 14, and sections 15, ¹ [15A, 19, 20], 58F, and ¹ [sub-section (2)] of section 58G, shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in sub-sections ¹ [(2), (2A), (2B)], (3A), (3B), (3C) and (3D) of section 18, section 57 and 58H, super-tax shall be payable by the assessee direct.

CHAPTER IX-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

Definitions.

58A. In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) a “recognized provident fund” means a provident fund which has been and continues to be recognized by the Commissioner in accordance with the provisions of this Chapter ;
- (b) an “employer” means—
 - (i) a Hindu undivided family, company, firm or other association of ³ [* * *] persons ; or
 - (ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees ;
- (c) an “employee” means an employee participating in a provident fund, but does not include a personal or domestic servant ;
- (d) a “contribution” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest ;
- (e) the “balance to the credit” of an employee means the total amount to the credit of his individual account in a provident fund at any time ;
- (f) the “annual accretion” to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest ;
- (g) the “accumulated balance due” to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and

¹ Substituted by Act L, 1954.

² The words, “the second proviso to section 8,” were deleted by Act L, 1954.

³ The words “individuals or” were deleted *ibid*.

- (h) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

58B. (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may at any time withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions. The according and withdrawal of recognition.

(2) The President of the Union may, at his discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may at any time withdraw recognition from any recognized provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Financial Commissioner may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognize ¹ [or an order withdrawing recognition from] a provident fund may appeal, within sixty days of such order, to the Financial Commissioner.

The appeal shall be in the form and shall be verified in the manner prescribed by the Financial Commissioner.

58C. (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the President of the Union may, by rule, prescribe :— Conditions to be satisfied by a recognized provident fund.

- (a) All employees shall be employed in the Union of Burma, or shall be employed by an employer whose principal place of business is in the Union of Burma.
- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.
- (c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.
- (d) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound)

¹ Inserted by Act L, 1954.

credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

- (e) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries.
- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

- (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.
- (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the President of the Union may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognized provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employers' contributions in certain cases.

58D. Subject to any rules which the President of the Union may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58c :—

- (a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and
- (b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

58E. The annual accretion in any year to the balance at the credit of any employee participating in a recognized provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and ~~super-tax~~ :

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

58F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognized provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year. Exemption of annual accretion from income-tax.

(2) In the accounts of a recognized provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, ¹ [if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and] in so far as it is allowed at a rate not exceeding such rate as the President of the Union may, by notification in the Gazette, fix in this behalf.

58G. (1) Where the accumulated balance due to an employee participating in a recognized provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930. Exemption of accumulated balance from income-tax and super-tax.

India XVIII,
1933.

(2) Where an employee participating in a recognized provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income :

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

² [(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of ~~income-tax and super-tax~~, which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognized provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the

¹ Inserted by Act L, 1954.

² Substituted *ibid.*

employee in addition to any other income-tax and super-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.]

Deduction at
source of
~~income-tax~~
pay. ble on
accumulated
balances d. e.

58H. The trustees of a recognized provident fund, or other person authorized by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any ~~income-tax~~ payable under sub-section (3) of section 58G and ~~any income-tax and super-tax payable~~ on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

Accounts of
recognized
provident
funds.

58I. (1) The accounts of a recognized provident fund shall be maintained by the trustees of the fund, and shall be in such form and for such periods, and shall contain such particulars as the Financial Commissioner may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Financial Commissioner may prescribe.

Treatment of
balances in
newly
recognized
provident
funds.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Financial Commissioner may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognized provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognized provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognized fund shall be excluded from the accounts of the recognized fund and shall be liable to income-tax and ~~super-tax~~ in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Financial Commissioner may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognized provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognized provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

58K. (1) Where an employer, who maintains a provident fund (whether recognized or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

Treatment of fund transferred by employer to trustees.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) ¹[shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed] to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

Provisions relating to rules.

(2) In addition to any power conferred by this Chapter, the President of the Union may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition;
- (b) limiting the contributions to a recognized provident fund by employees of a company who are shareholders in the company;
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognized provident fund;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and ~~super-tax~~ may be granted

¹ Substituted by Act L, 1954.

in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognized provident funds as he may deem requisite.

Application
of this
Chapter.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act applies.

¹ [CHAPTER IXB.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

Definitions.

58N. In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) “approved superannuation fund” means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the provisions of this Chapter ;
- (b) “employer”, “employee” and “contribution” have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds ;
- (c) “ordinary annual contribution” means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

Approval
and with-
drawal of
approval.

58O. (1) The Commissioner may accord approval to any superannuation fund or any part of a superannuation fund which in his opinion complies with the requirements of section 58P, and may at any time withdraw such approval, if in his opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

¹ Inserted by Act XXVIII, 1950.

58P. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely— Conditions for approval.

- (a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in the Union of Burma ;
- (b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependents of persons who are or have been such employees on the death of those persons ; and
- (c) the employer in the trade or undertaking shall be a contributor to the fund :

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a fund or any part of a fund --

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or
- (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or
- (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the Union of Burma.

58Q. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Commissioner, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Commissioner may require such further information to be supplied as he thinks proper. Application for approval.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Commissioner and in default of such communication any approval given may be withdrawn from the date on which the alteration took effect.

58R. Income derived from investments of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply : Exemption of superannuation fund from income-tax.

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Commissioner may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Commissioner thinks proper.

Treatment
of repaid
contribu-
tions.

58S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax to be the income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his life-time but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall, except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund, at the average rate of tax at which the employee was liable to income-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Government within the prescribed time and in such manner as the Commissioner may direct.

Deduction
from pay of,
and contribu-
tions on
behalf of,
employee to
be included
in return
under
section 21.

58T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

Liabilities
of trustees on
cessation of
approval
of fund.

58U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation or in lieu of annuities.

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

Particulars
to be
furnished in
respect of
superannua-
tion funds.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

(a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require ;

- (b) prepare and deliver to the Income-tax Officer a return containing—
 - (i) the name and place of residence of every person in receipt of an annuity from the fund ;
 - (ii) the amount of the annuity payable to each annuitant ;
 - (iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees ; and
 - (iv) particulars of sums paid in commutation or in lieu of annuities ;
- (c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Commissioner may reasonably require.]

CHAPTER X.

MISCELLANEOUS.

59. (1) The Financial Commissioner may, subject to the control of the President of the Union, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of the Union of Burma or for such part thereof as may be specified. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
 - (i) incomes derived in part from agriculture and in part from business ;
 - (ii) insurance companies ;
 - (iii) persons residing out of the Union of Burma ;
- (b) prescribe the procedure to be followed on applications for refunds ;
- ¹ [(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] ;
- ² [(c) prescribe the procedure for giving effect to the terms of any agreement for the avoidance of double taxation on income which may be entered into by the President of the Union under section 49] ;
- ³ [(d) * * * * *]

(e) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be

¹ Inserted by Act LXXVII, 1953.

² Substituted by Act L, 1954.

³ Clause (d) was deleted *ibid.*

ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Financial Commissioner, is unreasonable, the rules made under that sub-section may—

- (a) prescribe methods by which an estimate of such income, profits and gains may be made, and
- (b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax ;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Gazette, and shall thereupon have effect as if enacted in this Act.

Power to
make exemp-
tions, etc.

60. (1) The President of the Union may, by notification in the Gazette, make an exemption, reduction in rate or other modification in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the President of the Union may grant such relief as he may think fit.

Appearance
by authorized
representa-
tive.

¹ **[61. (1)** Any assessee, who is entitled or required to attend ² [before the Appellate Tribunal or any Income-tax authority] in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorized by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or an accountant or an Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

- (i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ;
- (ii) “lawyer” means a *Barrister-at-law* or Solicitor or any other person entitled to plead in any Court of law in the Union of Burma ;
- (iii) “accountant” means a registered accountant enrolled on the Register of Accountants maintained by the President of the Union under the Burma Auditor's Certificates Rules, 1939, or

¹ Substituted by Act XXXVI, 1946.

² Substituted by Act L, 1954.

a member of an association of accountants recognized in this behalf by the President of the Union ;

(iv) "Income-tax practitioner" means—

- (a) any person who, before the 1st day of October 1946, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;
- (b) any person who has passed any accountancy examination recognized in this behalf by the Financial Commissioner ; or
- (c) any person who has acquired such qualifications as the Financial Commissioner may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of October 1946 shall be qualified to represent an assessee under sub-section (1) ; and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) ;

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard ,
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Financial Commissioner to have the direction cancelled, and
- (c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.]

62. A receipt shall be given for any money paid or recovered under this Act. Receipts to be given.

63. (1) A notice or requisition under this Act may be served on the person therein-named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure. Service of notices.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other ¹[association of persons], be addressed to the principal officer thereof.

64. (1) Where an assessee carries on ²[a business, profession or vocation] at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the ²[business, profession or vocation] is Place of assessment.

¹ Substituted by Act XXXVI, 1946.

² S. substituted by Act L, 1954.

carried on in more places than one, by the Income-tax Officer of the area in which ¹ [the principal place of his ² (business, profession or vocation)] is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views :

³ [Provided further that the place of assessment shall not be called in question by an assessee if he has made a return ~~in~~ response to a notice under sub-section (1) of section 22 and has stated therein the principal place where he carries on his ¹ (business, profession or vocation.) or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or under section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.]

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

Indemnity.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Statement of
case by
Appellate
Tribunal to
High Court.

⁴ [**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 :

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 no question of law

¹ Substituted by Act XXXVI, 1946.

² Substituted by Act L, 1954.

³ Added by Act XXVI, 1946.

⁴ Substituted by Act LXXVII, 1953.

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 ¹ [unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorizing the Commissioner to postpone payment of such refund until the disposal of the appeal to the Supreme Court.]

(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).]

66A. ² [(1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges :

References to be heard by Benches of High Court, and appeal to lie, in certain cases, to the Supreme Court.

¹ Added by Act L, 1954:

² Substituted *ibid*.

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to opinion of the majority of the Judges who have heard the case, including those who first heard it.]

(2) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of the High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66 :

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

¹ [(5) * * * * *]

Bar of suits
in civil Court.

67 No suit shall be brought in any civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

Computation
of periods of
limitation.

67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Act to have
effect
pending
legislative
provision for
charge of
Income-tax.

²[**68.** If on the first day of October in any year provision has not yet been made by an Act of the Union Parliament for the charging of income-tax for that year this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.]

¹ Deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

² Inserted by Act L, 1954.