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An Act to amend the Land and Income Tax Act 1954

[30 September 1959]

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

1. Short Title—This Act may be cited as the Land and Income Tax Amendment Act 1959, and shall be read together with and deemed part of the Land and Income Tax Act 1954 (hereinafter referred to as the principal Act).

PART I

AMENDMENTS OF PRINCIPAL ACT

2. Application of Part I—Except where this Part of this Act otherwise provides, this Part of this Act shall apply with respect to the tax for the year of assessment that commenced on the first day of April, nineteen hundred and fifty-nine, and for every subsequent year.

3. Meaning of "dividends"—(1) Section four of the principal Act is hereby amended by omitting from subsection three, as added by subsection four of section four of the Land and Income Tax Amendment Act (No. 2) 1958, the words "(not being an amount that is required to be taken into account under section one hundred and seventeen or any other section of this Act for the purpose of assessing ordinary income tax)", and substituting the words "in excess of the cost to the company of that asset (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing ordinary income tax)".

(2) This section shall be deemed to have come into force on the twenty-seventh day of August, nineteen hundred and fifty-nine, and shall not apply to payments or other transactions referred to in subsection one of section four of the principal Act made or carried out before that date.

4. Income tax payable by non-resident investment companies—The principal Act is hereby amended by inserting, after section seventy-eight A, as inserted by section five of the Land and Income Tax Amendment Act (No. 2) 1958, the following section:

“78B. (1) Where the Governor-General is satisfied that any investments or other assets in New Zealand of any non-resident investment company, as defined in subsection two of section eighty-six A of this Act, are being or are to be used wholly or principally for the purpose of developing New Zealand, he may, by Order in Council, declare those investments or assets to be development assets for the purposes of this section.

“(2) Where the Commissioner is satisfied that if this section had not been passed the amount of ordinary income tax payable by a non-resident investment company in respect of any income derived by it from development assets would exceed the amount of income tax that would be payable by the company in respect of that income if the company had derived that income from a source in the country or territory in which the company is resident, the Commissioner shall allow the amount of the excess as a rebate from the amount of ordinary income tax that would be payable by the company in respect of that income apart from the provisions of this section.

“(3) In this section the term ‘income tax’ means, in respect of any country or territory other than New Zealand, any tax which in the opinion of the Commissioner is substantially of the same nature as ordinary income tax under this Act.”

5. Special exemption where taxpayer over sixty-five—

(1) Section eighty of the principal Act is hereby amended by omitting from the proviso the words “commencement of the year of assessment”, and substituting the words “end of the income year”.

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

6. Special exemption for married man and for married woman supporting husband—(1) The principal Act is hereby further amended—

- (a) By repealing subsection four of section eighty-one, as enacted by subsection three of section five of the Income Tax Assessment Act 1957:
 - (b) By repealing subsection four of section eighty-two, as enacted by subsection three of section five of the Income Tax Assessment Act 1957.
- (2) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

7. Special exemption for dependent children—(1) Section eighty-three A of the principal Act, as inserted by section eighty-one of the Income Tax Assessment Act 1957, is hereby amended by repealing subsection two, and substituting the following subsection:

“(2) Where claims are made under this section by two or more taxpayers for deductions by way of special exemption in respect of the same child, the Commissioner shall not allow a greater exemption in the aggregate than the amount to which one of them would be entitled under this section if he were the only claimant; and, if in the circumstances the Commissioner thinks fit, he may allow the amount of the exemption to one only of those taxpayers to the exclusion of the other or others, or, if the Commissioner is satisfied that the amount of the exemption should be apportioned among any two or more of those taxpayers, he may apportion the amount of the exemption among the last-mentioned taxpayers in such manner as he thinks fit.”

(2) Section eighty-three A of the principal Act, as so inserted, is hereby further amended by repealing subsection three.

(3) Subsection two of this section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

8. Deductions in respect of superannuation contributions—(1) Section eighty-five of the principal Act is hereby amended by adding to subsection six, as added by subsection three of section five of the Income Tax Assessment Act 1957, the following proviso:

“Provided that, for the purpose of determining if he is entitled to a deduction under this subsection, the amounts of the regular current contributions to a superannuation fund

subtracted in the year from his salary or wages under section ten of the Income Tax Assessment Act 1957 shall be deemed not to be contributions in respect of which he is entitled to a deduction under subsection two of this section.”

(2) Section eighty-five of the principal Act is hereby further amended by adding to subsection seven, as added by subsection three of section five of the Income Tax Assessment Act 1957, the words “not being deductions in respect of the regular current contributions to a superannuation fund subtracted in the year from the taxpayer’s salary or wages under section ten of the Income Tax Assessment Act 1957”.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

9. Territorial Force gratuities exempt from taxation—Section eighty-six of the principal Act is hereby amended by inserting in subsection one, after paragraph (h), the following paragraph:

“(hh) Income derived by any person from any gratuity granted or paid to him, pursuant to regulations made under the New Zealand Army Act 1950, on the completion of a specified period of service as an officer or soldier of the Territorial Force:

“Provided that the amount of the exemption under this paragraph in any income year shall not exceed sixty pounds of that income:”.

10. First £12 of interest and investment society dividends exempt from taxation—(1) Section eighty-six of the principal Act is hereby further amended by inserting in subsection one, after paragraph (i), as substituted by section six of the Land and Income Tax Amendment Act (No. 2) 1958, the following paragraph:

“(ii) Income derived by any person (not being a company, or a public authority, or a Maori authority, or an unincorporated body, or a trustee assessable and liable for income tax under paragraph (a) or paragraph (b) of section one hundred and fifty-five of this Act) from interest (not being interest that is exempt from income tax under any other provisions of this section) or investment society dividends:

“Provided that the amount of the exemption under this paragraph in any income year shall not exceed twelve pounds of the aggregate of that income:”.

(2) The principal Act is hereby consequentially amended as follows:

- (a) By repealing section eighty-five A, as inserted by section eighty-two of the Income Tax Assessment Act 1957:
- (b) By omitting from paragraph (a) of subsection four of section one hundred and four, as substituted by section twenty-nine of the Land and Income Tax Amendment Act (No. 2) 1958, and also from paragraph (e) of that subsection the words “and section eighty-five A”:
- (c) By omitting from paragraph (a) of subclause two of clause five of Part A (as substituted by subsection two of section five of the Income Tax Assessment Act 1957) of the First Schedule the words “and any interest and investment society dividends not exceeding in the aggregate £12”.

(3) The Income Tax Assessment Act 1957 is hereby consequentially amended as follows:

- (a) By repealing subparagraph (ii) of paragraph (a) of subsection one of section twenty-two:
- (b) By repealing subparagraph (ii) of paragraph (a) of section forty-one:
- (c) By repealing section eighty-two.

(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

11. Income of certain visitors exempt from taxation—

(1) Section eighty-six of the principal Act is hereby further amended by inserting in subsection one, after paragraph (k), the following paragraph:

“(kk) Income derived by a person who is not (within the meaning of this Part of this Act) resident in New Zealand, from personal (including professional) services performed by that person within New Zealand during a visit to New Zealand, if—

“(i) That visit does not exceed a period of ninety-two days; and

“(ii) In the country or territory in which that person is resident, that income, being exempt from income tax in New Zealand, is chargeable with any tax which in the opinion of the Commissioner is substantially of the same nature as income tax under this Act; and

“(iii) Those services are performed for or on behalf of a person who is not (within the meaning of this Part of this Act) resident in New Zealand:

“Provided that this paragraph shall not apply to the income of public entertainers (including, but without limiting the generality of the term ‘public entertainers’, theatre, motion picture, television, and radio artists, singers, musicians, dancers, lecturers, circus performers, boxers, wrestlers, athletes, and other professional sportsmen):

“Provided also that this paragraph shall not apply to the income derived in any income year by a person who is present within New Zealand for a period or periods exceeding in the aggregate ninety-two days during that year:”.

(2) This section shall be deemed to have come into force on the first day of January, nineteen hundred and fifty-nine, and to apply in the case of any person leaving New Zealand (whether before or after the passing of this Act) after the thirty-first day of December, nineteen hundred and fifty-eight.

12. Excess income on forced sale of livestock—(1) Section one hundred and three A of the principal Act, as inserted by section five of the Land and Income Tax Amendment Act 1956, is hereby amended by repealing subsection one, and substituting the following subsection:

“(1) This section applies where—

“(a) Either—

“(i) Land upon which a taxpayer formerly carried on a farming business has become no longer available to him to carry on the farming business by reason of the expiry of a lease of the land or of the acquisition of the land by the Crown or a local authority as defined in section two of the Public Works Act 1928, whether the land was taken under that Act or otherwise acquired by the Crown or local authority; or

“(ii) A farming business carried on by a taxpayer has been adversely affected by reason of any event, happening, or cause which is declared by the Minister of Finance to be a disaster for the purposes of this section; and

“(b) The Commissioner is satisfied that, on account of any of the matters mentioned in paragraph (a) of this subsection, the taxpayer was obliged to sell or otherwise dispose of livestock used by him in the farming business; and

“(c) The price realised, or deemed for the purposes of this Act to have been realised, by the taxpayer for the livestock and taken into account in calculating the assessable income of the taxpayer was in excess of the standard value last adopted in respect of the livestock; and

“(d) The Commissioner is satisfied that the taxpayer has, in either the first or the second income year after the income year in which the livestock was sold or otherwise disposed of, acquired other livestock for the purpose of—

“(i) Carrying on a farming business on other land in any case where subparagraph (i) of paragraph (a) of this subsection applies; or

“(ii) Replacing wholly or partly the livestock sold or otherwise disposed of in any case where subparagraph (ii) of paragraph (a) of this subsection applies.”

(2) Section one hundred and three A of the principal Act, as inserted as aforesaid, is hereby further amended by omitting from subsection four the words “the expiry of a lease of land or of the disposition of land to the Crown”, and substituting the words “any of the matters mentioned in paragraph (a) of subsection one of this section”.

(3) Section one hundred and three A of the principal Act, as inserted as aforesaid, is hereby further amended by adding the following subsections:

“(5) The Minister of Finance may, by notice in the *Gazette*, declare to be a disaster for the purposes of this section any event, happening, or cause which in his opinion has adversely affected farms or livestock generally in any district or locality, including, but without limiting the generality of the power of the Minister, fire, flood, drought, or other natural causes, and sickness or disease among livestock.

“(6) No relief shall be given under this section in respect of any loss or damage for which compensation may be claimed under section six of the Finance Act 1954.”

(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

13. Aggregation of incomes of husband and wife—

(1) Section one hundred and four of the principal Act, as substituted by section twenty-nine of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby amended by repealing the definition of the term “first portion of the aggregable income” in subsection one, and substituting the following definition:

“‘First portion of the aggregable income’ means the first six hundred and fifty pounds of the aggregable assessable income or, where the aggregable assessable income is less than six hundred and fifty pounds, the amount of the aggregable assessable income and any aggregable non-assessable income, but not exceeding such part of the aggregable non-assessable income as when added to the aggregable assessable income will amount to six hundred and fifty pounds:”.

(2) Section one hundred and four of the principal Act, as so substituted, is hereby further amended as follows:

- (a) By omitting from subsections three, eleven, and twelve the words “the total of five hundred and twenty pounds and any interest and investment society dividends not exceeding in the aggregate twelve pounds” wherever they occur, and substituting in each case the words “six hundred and fifty pounds”:
- (b) By omitting from subsection five the words “Subject to subsections six, seven, and eight of this section”:
- (c) By inserting in paragraph (a) of subsection five, after the words “payable by a married woman”, the words “who is an absentee”:
- (d) By repealing subsections six, seven, and eight.

(3) Section one hundred and four of the principal Act, as so substituted, is hereby further amended by inserting in subsection five, after paragraph (a), the following paragraph:

“(aa) The income tax payable by a married woman, other than an absentee, in respect of the assessable income included in the first portion of the aggregable income shall be the amount of income tax as

assessed pursuant to the provisions of section twenty-six B of the Income Tax Assessment Act 1957 on an assessable income that does not include income from employment and is equal to the amount of that assessable income:”.

(4) Section one hundred and four of the principal Act, as so substituted, is hereby further amended by omitting from paragraph (c) of subsection five the words “and his wife shall in each case”, and substituting the word “shall”.

(5) Section one hundred and four of the principal Act, as so substituted, is hereby further amended by adding to subsection five the following paragraph:

“(d) The social security income tax payable—

“(i) By a married woman who is an absentee, in respect of her income; and

“(ii) By a married woman, other than an absentee, in respect of the second portion of the aggregable income,—

shall in each case be the social security income tax that would otherwise be payable in accordance with this Act if this section had not been passed.”

(6) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

14. Depreciation allowance where depreciated asset acquired by taxpayer—(1) The principal Act is hereby further amended by inserting, after section one hundred and thirteen, the following section:

“113A. (1) Where, whether before or after the commencement of this Act, a taxpayer has acquired any property in respect of which the Commissioner has for any year of assessment (whether before or after the commencement of this Act) allowed to the person from whom the property was acquired a deduction in respect of the depreciation of the property, the Commissioner shall not allow to the taxpayer acquiring the property any greater deduction in respect of the depreciation of the property than that which would have been allowed to the person from whom the property was acquired if that person had retained it:

“Provided that, where any amount so allowed as a deduction to the person from whom the property was acquired has been dealt with under the provisions of section one hundred and

seventeen of this Act or the corresponding provisions of any former Act, the Commissioner may allow to the taxpayer acquiring the property a deduction in respect of the depreciation of the property based on the aggregate of the total of all amounts so dealt with and the amount of the depreciated value of the property immediately before it was acquired by the taxpayer.

“(2) This section shall not apply where the Commissioner is of the opinion that the circumstances are such that a deduction in respect of the depreciation of the property based on the actual price or other consideration given for the property should be allowed.”

(2) Section one hundred and thirteen of the principal Act is hereby amended by inserting in the first proviso to subsection one, after the words “subject to”, the words “section one hundred and thirteen A and also to”.

(3) Every deduction in respect of depreciation allowed by the Commissioner in the manner specified in this section but before the passing of this Act is hereby declared to have been properly and validly allowed.

15. Revised assessments where assets sold after depreciation allowance—Section one hundred and seventeen of the principal Act is hereby amended by omitting from subsection one the words “that asset at a price”, and substituting the words “or otherwise disposes of that asset at a price or for a consideration”.

16. Profits on sale of depreciated assets may be allowed against cost of replacement assets—Section one hundred and seventeen of the principal Act is hereby further amended by inserting, after subsection one, the following subsection:

“(1A) Where the asset is not a building or any part of, or any share or interest in, a building, then, instead of carrying out the provisions of subsection one of this section, or carrying out those provisions to the full extent provided in that subsection, the Commissioner, upon application made in writing by or on behalf of the taxpayer not later than six months after the end of the income year in which the taxpayer sells or otherwise disposes of the asset, or within such further period as the Commissioner in his discretion may allow in any case or class of cases, may permit an amount equal to the total of the deductions which would otherwise be disallowed under that subsection, or such portion

of that total as he thinks fit, to be applied in reduction of the cost, for the purpose of calculating depreciation allowable under this Act, of any property which the Commissioner is satisfied has before the making of the application been acquired by the taxpayer to replace the asset so sold or otherwise disposed of:

“Provided that any amount by which the cost of any property has been reduced under this subsection shall, for the purposes of subsection one of this section, be deemed to be a deduction allowed in respect of the depreciation of that property.”

17. Revised assessments where depreciated assets acquired by Crown or local authority—Section one hundred and seventeen of the principal Act is hereby further amended by adding the following subsection:

“(5) For the purposes of this section, where any property owned by a taxpayer is acquired by the Crown or a local authority as defined in section two of the Public Works Act 1928, whether the property is taken under that Act or otherwise acquired by the Crown or local authority, that property shall be deemed to have been sold by the taxpayer at a price equal to the compensation, consideration, or other amount or value payable or given in respect of the acquisition by the Crown or local authority.”

18. Revised assessments where interest in depreciated assets disposed of—Section one hundred and seventeen of the principal Act, as amended by section seventeen of this Act, is hereby further amended by adding the following subsection:

“(6) The foregoing provisions of this section shall, as far as they are applicable and with the necessary modifications, apply in any case where, for any reason, including—

“(a) The formation or dissolution of a partnership; or

“(b) A variation in the constitution of a partnership, or in the interests of the partners,—

a taxpayer sells or otherwise disposes of a share or interest in any property or a change has occurred in the ownership of, or in the share or interest of a taxpayer in, any property and any of those provisions would apply if the taxpayer had been the sole owner of the property.”

19. Share dealing—(1) The principal Act is hereby further amended by inserting, after section one hundred and thirty-six, the following heading and section:

“Share Dealing

“136A. (1) Where a taxpayer is engaged in the business of dealing in shares, or has acquired shares for the purpose of selling or otherwise disposing of them, any dividends derived by the taxpayer in respect of those shares since their acquisition by him which, in the opinion of the Commissioner,—

“(a) Constitute a realisation or recovery of the price at which the taxpayer acquired those shares; and

“(b) Are dividends the declaration or payment or distribution of which was in any way—

“(i) Controlled or directed by the taxpayer; or

“(ii) Part of or associated with a scheme which includes the acquisition of those shares and the payment or distribution of those dividends,—

shall be deemed to be received by the taxpayer as consideration or part consideration on sale of the shares, whether or not the shares have been or will be sold, and shall be taken into account accordingly in calculating, in the income year in which the dividend is derived, the profit arising to or the loss incurred by the taxpayer in relation to the transaction initiated by the acquisition of those shares:

“Provided that, where a profit arises to the taxpayer, the amount of income tax that would be payable on that profit apart from this proviso shall, so far as that amount of income tax extends, be reduced by the total amount of income tax payable by the taxpayer pursuant to subsection two of this section on any dividends that have been taken into account under this subsection, but only to the extent to which any part of that total has not previously been applied in reduction of income tax otherwise payable on any such profit.

“(2) Notwithstanding anything to the contrary in subsection one of this section, any dividend that is taken into account under that subsection in any income year shall, for the purposes of the provisions of this Act relating to income tax on dividends and excess retention tax, remain and be a dividend derived by the taxpayer in that year, and the amount thereof undiminished by any loss incurred in the transaction aforesaid shall be included as a dividend in the assessable income or, as the case may require, the non-assessable income of the taxpayer in that year.

“(3) Notwithstanding anything to the contrary in section forty-five of this Act, it shall be a ground for objection under Part III of this Act to an assessment of income tax that any

determination of the Commissioner made for the purposes of this section is erroneous, and the Court hearing the objection shall have power to review the determination of the Commissioner, and shall for that purpose have all the powers and functions of the Commissioner in making that determination, and the decision of the Court shall, except for the purposes of objection thereto, take effect as if it were the determination of the Commissioner; but nothing in this subsection shall restrict the right of the Commissioner or of the objector to appeal against the decision of the Court under Part III of this Act.”

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-nine, and in every subsequent year, and shall apply whether the taxpayer acquired the shares or derived the dividends in respect of those shares before or after the passing of this Act.

20. Losses deductible from income liable to social security income tax—(1) The principal Act is hereby further amended by inserting, after section one hundred and thirty-seven, the following section:

“137A. Any loss or part of a loss of the kind referred to in section one hundred and twenty-six of the Social Security Act 1938 that was incurred by any taxpayer in any financial year before the first day of April, nineteen hundred and fifty-seven, and would have been deductible under that section in assessing the amount of social security charge payable by the taxpayer on any income (other than salary or wages) for any financial year after the thirty-first day of March, nineteen hundred and fifty-seven, had the Income Tax Assessment Act 1957 not been passed, shall, for the purpose of assessing social security income tax, be deemed to be a loss which the taxpayer is entitled to claim, and for that purpose shall, in accordance with section one hundred and thirty-seven of this Act, be carried forward and, so far as may be, deducted from or set off against his assessable income for such of the six years following the year in which the loss was incurred as are years in which the income thereof is subject to social security income tax:

“Provided that any relief under this section shall be given so far as possible from the first assessment of social security income tax within the aforesaid period of six years, and, so far as it cannot then be given, shall be given in the next assessment, and so on:

“Provided also that, where the taxpayer is a company, the provisions of subsection three of section one hundred and thirty-seven of this Act shall not apply to any relief under this section.”

(2) This section shall be deemed to have come into force on the date of the passing of the Income Tax Assessment Act 1957.

21. Refunds of income tax on dividends derived from other countries—The principal Act is hereby further amended by inserting, after section one hundred and forty-four, the following section:

“144A. (1) Where—

“(a) A dividend is or has been derived by a taxpayer in the income year or in any previous year (whether before or after the commencement of this section) from any country or territory outside New Zealand; and

“(b) Under the law of that country or territory the company paying the dividend has deducted or was authorised to deduct from the dividend any amount in respect of income tax which the taxpayer was not personally liable to pay; and

“(c) In the income year the taxpayer receives a payment or is allowed a credit of a sum in respect of the amount which the company deducted or was authorised to deduct,—

that sum shall be deemed to be a dividend derived by the taxpayer from the company in the income year and shall be included as such in the assessable income or, as the case may require, the non-assessable income of the taxpayer for that year.

“(2) In this section the term ‘income tax’ means, in respect of any country or territory outside New Zealand, any tax which in the opinion of the Commissioner is substantially of the same nature as income tax under this Act.”

22. New sections as to bonus shares inserted—(1) The principal Act is hereby further amended by inserting, after section one hundred and forty-four A (as inserted by section twenty-one of this Act), the following sections:

“144B. **Bonus shares issued from accumulated profits to be non-assessable income of shareholders in certain cases**—

(1) This section applies to dividends declared by companies (other than companies exempt from income tax) which are

resident in New Zealand, if and so far as the Commissioner is satisfied—

- “(a) That the dividend is declared out of income derived, or deemed to have been derived, by the company in any income year not later than the income year that ended with the thirty-first day of March, nineteen hundred and fifty-seven; and
- “(b) That at the end of the last-mentioned year (or of the accounting year of the company corresponding with that income year where the company furnishes an annual return of income under section eight of this Act for an accounting year ending with an annual balance date other than the thirty-first day of March) the income out of which the dividend is declared was undistributed and was disclosed in the accounts of the company for that year as furnished to the Commissioner; and
- “(c) That the dividend is satisfied—
- “(i) By the issue of fully paid up or partly paid up ordinary shares in the company declaring the dividend; or
- “(ii) By giving credit in respect of the whole or part of the amount unpaid on any ordinary shares in the company, being shares that are issued before the declaration of the dividend but are not at the time of the declaration of the dividend fully paid up; and
- “(d) That the shares so issued, or, as the case may be, the shares in respect of which the credit is so given, are identified by a name or other classification sufficient to distinguish them from other shares issued by the company declaring the dividend; and
- “(e) That during the income year (or, as the case may be, the accounting year of the company corresponding with that income year) in which the shares are issued, or, as the case may be, the credit is given, the company declaring the dividend is not wound up or its paid-up share capital is not reduced; and
- “(f) That the declaration of the dividend and the issue of the shares or, as the case may be, the giving of the credit in satisfaction of the dividend are both made not later than the thirty-first day of March, nineteen hundred and sixty-three.

“(2) To the extent to which this section applies to a dividend derived, or deemed to have been derived, by a taxpayer (including a company) during the income year that commenced on the first day of April, nineteen hundred and fifty-eight, or during any subsequent year, the dividend shall be deemed to be exempt from income tax under this section, whether or not it is exempt from income tax under any other provision of this Act, and shall be deemed to be non-assessable income derived by the taxpayer in that year.

“144c. **Subsequent distribution of capital of bonus shares**—Where section one hundred and forty-four B of this Act applies to a dividend, and at any time within ten years after the declaration of the dividend there is distributed any amount (whether in money or money’s worth) which, in the opinion of the Commissioner, is either directly or indirectly a distribution of the paid-up capital of shares which were wholly or partly paid up by the satisfaction of the dividend in the manner prescribed in paragraph (c) of subsection one of that section, then, notwithstanding anything to the contrary in this Act, the amount so distributed shall, for the purposes of this Act, but only to the extent to which the shares were so paid up, be deemed to be a dividend derived, in the income year in which the distribution is made, by the person (including a company) entitled to that amount, whether or not that person is the shareholder who derived the first-mentioned dividend:

“Provided that, where the first-mentioned dividend or part thereof is satisfied by the issue of partly paid up ordinary shares in the company or by giving credit in respect of any amount unpaid on any ordinary shares in the company, any distribution made in respect of the amount paid up on those shares shall, for the purposes of this section, be deemed to be made in the first place in respect of the amount that was paid by the satisfaction of that dividend before the distribution is regarded as being a return of share capital otherwise paid on those shares.”

(2) Section two of the principal Act is hereby amended by inserting in paragraph (c) of the definition of the term “non-assessable income”, as substituted by subsection two of section three of the Land and Income Tax Amendment Act (No. 2) 1958, after the words “section eighty-six”, the words “or subsection two of section one hundred and forty-four B”.

(3) Section one hundred and seventy-two B of the principal Act, as inserted by section fifteen of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby amended by inserting in the definition of the expression “distributable portion of

the income derived by a company in an accounting year”, after paragraph (b), the following paragraph:

“(bb) An amount equal to the total of all dividends that are included in the total income derived by the company in that accounting year to the extent to which they are dividends to which section one hundred and forty-four B of this Act applies;”.

(4) Section one hundred and seventy-two B of the principal Act, as so inserted, is hereby further amended by repealing the definition of the term “dividends”, and substituting the following definitions:

“‘Dividends’, in relation to a company declaring or distributing a dividend, or to a company from which a shareholder has otherwise derived a dividend, means dividends as defined in subsection one of section four of this Act; and includes the amount of any credit given or of the paid-up value of any shares allotted or of any distribution as respectively specified in subsection two of that section, which amount, but for that subsection, would be included in the expression ‘dividends’; but does not include—

“(a) Dividends to the extent to which they are dividends to which section one hundred and forty-four B of this Act applies; or

“(b) Any amount which is deemed to be a dividend under section one hundred and forty-four C of this Act:

“‘Dividends’, in relation to a company deriving a dividend, means dividends as defined in subsection one of section four of this Act; and includes any amount that is deemed to be a dividend under section one hundred and forty-four C of this Act:”.

(5) This section shall apply—

(a) With respect to income tax, to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year; and

(b) With respect to excess retention tax, in accordance with section two of this Act:

Provided that, where before the passing of this Act a company has declared a dividend to which section one hundred and forty-four B of the principal Act (as inserted by this section) applies wholly or in part, the company, by notice

in writing given to the Commissioner not later than the thirty-first day of March, nineteen hundred and sixty, or within such further period as the Commissioner in his discretion may allow in any case or class of cases, may elect that section one hundred and forty-four B of the principal Act shall not apply to so much of that dividend as would otherwise be subject to that section, or to such portion thereof as is stated in the notice, by specifying the shares in the company to which that section is not to apply; and thereupon to that extent that section shall not apply to that dividend with respect to the assessment of the shareholders of the company for income tax or of the company for excess retention tax.

23. Insurance companies other than life insurance companies—Section one hundred and fifty-one of the principal Act is hereby amended by repealing paragraph (b) of subsection one, and substituting the following paragraph:

“(b) No deduction shall be allowed from the income of such a company in respect of premiums paid on risks reinsured with persons or companies where the premiums for the reinsurance are paid out of New Zealand, or otherwise are not included in income derived from New Zealand by those persons or companies; and the income of a company to which this subsection applies shall not include sums recovered in respect of losses on risks so reinsured.”

24. Income derived by trustees—(1) Section one hundred and fifty-five of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(bb) Where a trustee furnishes a return of income under section eight of this Act for an accounting year ending with an annual balance date other than the thirty-first day of March, and any income derived by the trustee in that accounting year is also income derived by a beneficiary entitled or deemed to be entitled in possession to the receipt thereof under the trust during the same accounting year, the beneficiary shall, for the purposes of this Act, be deemed to have derived that income and to be entitled in possession to the receipt thereof under the trust during the same income year as that during which the trustee is, under section eight of this Act, deemed to have derived that income:”.

(2) Except where the hearing of an objection to an assessment of income tax has commenced before the passing of this Act, this section shall apply with respect to the tax for any year of assessment, whether the year commenced before or commences after the passing of this Act.

25. Exemption of income chargeable with tax in other parts of Commonwealth—Section one hundred and seventy of the principal Act is hereby amended by adding to subsection one the following proviso:

“Provided that this subsection shall not apply—

- “(a) To any dividend from which, under the law of any country or territory outside New Zealand, the company paying the dividend has deducted or was authorised to deduct any amount in respect of income tax which the person deriving the dividend was not personally liable to pay, notwithstanding that the dividend may be chargeable in that country or territory with any tax in addition to income tax chargeable in respect of the profits or income of the company; or
- “(b) To any dividend derived from a country or territory with the Government of which there is in force, or to which there has been extended and there is in force, a convention, agreement, or arrangement specified in an Order in Council under section one hundred and seventy-two of this Act or the corresponding provisions of any former Act.”

26. Relief from double taxation of income—Section one hundred and seventy-two of the principal Act is hereby amended—

- (a) By inserting in subsection one, after the words “income tax” where they first occur, the words “and excess retention tax, or either of those taxes”:
- (b) By inserting in subsection one, after the words “income tax” where they occur for the second time, the words “and excess retention tax, or either of those taxes, as the case may be”.

27. Dividends paid in excess of distributable portion of income—The principal Act is hereby further amended by repealing section one hundred and seventy-two H, as inserted by section fifteen of the Land and Income Tax Amendment Act (No. 2) 1958, and substituting the following section:

“172H. (1) Subject to section one hundred and seventy-two I of this Act, where—

“(a) The total of the dividends paid or credited by a company in the prescribed period in relation to an accounting year exceeds the distributable portion of the income derived by the company in that accounting year; and

“(b) The Commissioner has made an assessment of excess retention tax on the amount of the insufficient distribution of the income derived by the company in any of the six accounting years immediately preceding that accounting year; and

“(c) Any tax so assessed has not previously been remitted under this section,—

the Commissioner shall remit so much of the tax so assessed (but not including additional tax or penal tax) as has not previously been remitted under this section and does not exceed an amount calculated at the rate of seven shillings on each pound of an amount equal to twenty twenty-sevenths of the excess referred to in paragraph (a) of this subsection:

“Provided that any relief under this subsection shall be given so far as possible from the tax assessed on the amount of the insufficient distribution in respect of the earliest of those preceding accounting years and, so far as it cannot then be given, shall be given from the tax assessed on the amount of the insufficient distribution in respect of the next year, and so on.

“(2) The Commissioner may at any time refund any excess retention tax found under this section to have been paid in excess of the amount properly payable, notwithstanding anything to the contrary in section two hundred and twenty-three of this Act.”

28. Exemption of new companies from excess retention tax—Section one hundred and seventy-two K of the principal Act, as inserted by section fifteen of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby amended as from the date of the passing of the last-mentioned Act by repealing paragraph (b) of subsection one, and substituting the following paragraph:

“(b) Is not at any time in the accounting year of the company wholly or in part of the same nature as any business, or any part of any business, carried on by or for the benefit of—

“(i) Any person by whom or on whose behalf one-fourth or more of the shares in, or of the nominal capital of, or of the paid-up capital of, the company is held at any time in that accounting year; or

“(ii) Any company in or of which one-fourth or more of the shares, or of the nominal capital, or of the paid-up capital, is held at any time in that accounting year by or on behalf of any person who also holds at any time in that accounting year or on whose behalf is held at any time in that accounting year one-fourth or more of the shares in, or of the nominal capital of, or of the paid-up capital of, the first-mentioned company. For the purposes of this subparagraph, shares in one company held by another company shall be deemed to be held by the persons by whom or on whose behalf the shares in the last-mentioned company are held; and”.

29. New Part VIIA inserted in principal Act—The principal Act is hereby further amended by inserting, after Part VII, the following new Part:

“PART VIIA

“INSURANCE UNDERWRITERS

“203A. **Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

“‘Agent’ means any person who negotiates on behalf of any underwriter any contract of insurance; and includes any person who is deemed to be an agent of any other person under the provisions of this section:

“‘Contract of insurance’ includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance:

“‘Insurance’ means insurance or guarantee against loss, damage, or risk of any kind whatever except life insurance:

“‘Premium’ means a premium paid or payable by an insured person under a contract of insurance without allowing any deduction from the premium whatever:

“Provided that, where two or more underwriters are liable to contribute to any amount that may become claimable by an insured person under a contract of insurance, the premium paid or payable in respect of the contract with respect to each underwriter shall be such part of the premium (without deduction) paid or payable by the insured person in respect of that amount as bears the same proportion to that premium as the contribution for which the underwriter is liable bears to that amount:

“‘Underwriter’ means a person named in a contract of insurance as liable, or a person who otherwise incurs liability under a contract of insurance, to pay or contribute towards payment in whole or in part of any amount that may become claimable by the insured person under the contract; but does not include a company or a mutual insurance association incorporated under the Mutual Insurance Act 1955.

“(2) For the purposes of this Part of this Act, every person (whether in New Zealand or otherwise) who, in the course of his business, negotiates, directly or indirectly (whether through a broker or otherwise), any contract of insurance between—

“(a) Any underwriter; and

“(b) Any insured person in New Zealand,—
shall be deemed to be the agent of the underwriter (whether or not he is also the agent of that insured person), and any underwriter who incurs liability under any such contract shall be deemed to be carrying on the business of insurance in New Zealand.

“(3) The fact that any person issues any cover note or renewal notice in respect of any contract of insurance, or gives any information that the insurance has been effected or renewed, or issues any receipt or other document acknowledging the receipt of a premium in respect of the contract, or receives any premium in respect of the contract shall, for the purposes of this Part of this Act, be conclusive evidence that he has negotiated the contract.

“(4) For the purposes of this Part of this Act, a person shall be deemed to be the agent of an underwriter if that person acts in New Zealand as the agent, representative, or servant of a person carrying on business out of New Zealand as the agent of an underwriter.

“203B. Assessment of insurance underwriters—(1) Notwithstanding anything to the contrary in this Act,—

“(a) Every underwriter who carries on the business of insurance in New Zealand in any year shall be deemed to have derived and to derive profits from that business of an amount equal to the aggregate of all premiums paid or payable in respect of all contracts of insurance entered into by the underwriter in that year in carrying on that business; and

“(b) The amount so derived shall be deemed to be the taxable income of the underwriter from that business for that year; and

“(c) The underwriter shall be liable to income tax at the rate of five per cent of that amount; and

“(d) The agent in New Zealand of any underwriter in respect of any contract of insurance shall, for the purposes of this Act, be the agent of the underwriter in respect of that contract, and shall make returns and be assessable and liable for income tax accordingly, whether or not any premium in respect of that contract comes to the hands of the agent, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly.

“(2) The income of an underwriter from carrying on the business of insurance in New Zealand shall not be assessable or liable for income tax except as provided in this section, and, in the assessment for income tax of any other income derived by the underwriter, no regard shall be had to the income of that business or to any expenditure or loss incurred in carrying on that business.”

30. Rebate where total income between £1,040 and £1,092—(1) The principal Act is hereby further amended by repealing clause eight of Part A (as substituted by subsection two of section five of the Income Tax Assessment Act 1957) of the First Schedule, and substituting the following clause:

“8. (1) This clause shall apply to every taxpayer—

“(a) Who during the income year derived income (whether assessable or non-assessable) in excess of a total of £1,040 but less than a total of £1,092; and

“(b) Who, if his total income as aforesaid had been £52 less than it actually was, would have been—

“(i) A pay-period taxpayer in respect of that year; or

“(ii) A taxpayer to whom section 26A or section 54A of the Income Tax Assessment Act 1957 would apply in that year.

“(2) In the assessment of every taxpayer to whom this clause applies there shall be allowed from the tax assessed in accordance with the foregoing provisions of this Schedule a rebate of a sum equal to the amount by which the income tax exceeds an amount equal to the total of—

“(a) The amount of the income tax that would be payable in respect of the total income under an assessment made pursuant to the provisions of section 26B of the Income Tax Assessment Act 1957; and

“(b) A sum calculated at the rate of 6s. 8d. for every complete £1 of the amount by which the total income exceeds £1,040.”

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

31. Land and Income Tax (Annual) Act 1958 amended—The Land and Income Tax (Annual) Act 1958 is hereby amended as from its commencement by inserting in clause two of Part II of the Schedule, before the words “tax assessed” wherever they occur, the words “ordinary income”.

Refer 19 Reprint of this Act.

PART II

AMENDMENTS OF INCOME TAX ASSESSMENT ACT 1957

32. Application of Part II—Except where this Part of this Act otherwise provides, this Part of this Act shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and fifty-eight, and in every subsequent year.

33. Casual agricultural employees—(1) Section two of the Income Tax Assessment Act 1957 is hereby amended as follows:

(a) By omitting from the definition of the term “casual agricultural employee” in subsection one, as inserted by subsection one of section forty of the Land and

Income Tax Amendment Act (No. 2) 1958, the words "but does not include a fruit, hops, or tobacco picker":

(b) By omitting from subsection one the definition of the term "fruit, hops, or tobacco picker".

(2) Section fifteen of the Income Tax Assessment Act 1957, as amended by subsection two of section forty of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby further amended by omitting from the second proviso the words "a casual agricultural employee or a fruit, hops, or tobacco picker", and substituting the words "or a casual agricultural employee".

(3) The First Schedule to the Income Tax Assessment Act 1957 is hereby amended as follows:

(a) By omitting from clause two and also from clauses three and four the words "clauses 5 to 7" wherever they occur, and substituting in each case the words "clauses 5, 6, and 6A":

(b) By repealing clause seven.

(4) The Land and Income Tax Amendment Act (No. 2) 1958 is hereby consequentially amended by repealing subsection two of section forty and subsection one of section fifty-five.

(5) This section shall come into force on the date of the passing of this Act.

34. Repealing provisions as to partial pay-period taxpayers—(1) The Income Tax Assessment Act 1957 is hereby amended as follows:

(a) By repealing the definition of the term "partial pay-period taxpayer" in subsection one of section two:

(b) By repealing subsection two of section twenty-two:

(c) By omitting from subsection three of section twenty-two the words "or subsection two" and also the words "or, as the case may be, not to be a partial pay-period taxpayer":

(d) By omitting from subsection three of section twenty-two the words "or, as the case may be, subsection two" wherever they occur:

(e) By repealing section twenty-four.

(2) Section forty-five of the Land and Income Tax Amendment Act (No. 2) 1958 is hereby repealed.

35. Dependants for purposes of tax codes—(1) Section fourteen of the Income Tax Assessment Act 1957, as amended by paragraph (a) of section forty-three of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby further amended by repealing paragraph (c) of subsection six, and substituting the following paragraph:

“(c) In either case, when the employee delivers the tax code declaration to the employer or to the Commissioner,—

“(i) The child is not under this subsection a dependant of any other employee; and

“(ii) No other person is entitled to a special exemption under section eighty-three A of the principal Act in respect of the child; and

“(iii) The employee anticipates that no other person will become entitled in respect of that year to such an exemption; and

“(iv) The child is not entitled to a vested or contingent interest (not subject to any prior interest) in the income of a trust referred to in section eighty-four A of the principal Act.”

(2) Section forty-three of the Land and Income Tax Amendment Act (No. 2) 1958 is hereby consequentially amended by repealing paragraph (a).

36. Amount of tax deductions for pay period current when tax deductions altered—(1) The Income Tax Assessment Act 1957 is hereby further amended by inserting, after section sixteen, the following section:

“16A. (1) Notwithstanding anything to the contrary in this Part of this Act, this section shall apply where the amount of the tax deduction for the time being in force in relation to any payment of salary or wages is reduced or increased by an annual taxing Act or by an amendment made to the basic tax deductions.

“(2) Where this section applies, the amount of the tax deduction to be made from a payment of salary or wages to an employee for a pay period current on the date on which an altered tax deduction commences to apply shall be as follows:

“(a) Where the pay period does not exceed a month, the tax deduction in respect of the whole of the payment for the pay period shall be the amount of the altered tax deduction:

“(b) Where the pay period exceeds a month, the tax deduction shall be ascertained—

“(i) By calculating, on the basis specified in paragraph (a) of clause three of the First Schedule to this Act, the parts of the payment for the pay period that are for the respective portions of the pay period before and after the altered tax deduction commences to apply; and

“(ii) By calculating, in respect of each such part of the payment, the amount of the tax deduction that would be required to be made from a payment of salary or wages equal to that part for a pay period equal to the portion of the pay period to which that part relates; such calculation to be made according to the tax deduction in force in that portion of the pay period and in the manner provided in paragraphs (b) and (c) of the said clause three;—

and the total of the amounts of the tax deductions calculated under subparagraph (ii) of this paragraph shall be the amount of the tax deduction to be made from the payment of salary or wages for the pay period.

“(3) Where this section applies and section fifteen of this Act also applies, the amount of the total tax deduction required to be made in accordance with the last-mentioned section in respect of all payments of salary or wages made to an employee for a week current on the date on which an altered tax deduction commences to apply shall be calculated in accordance with the altered tax deduction:

“Provided that where all the payments made to an employee for that week are for services rendered before that date, the amount of that total tax deduction shall be calculated in accordance with the tax deduction in force in the portion of the week in which the services were rendered.

“(4) Where this section applies, and on or after the date on which an altered tax deduction commences to apply a payment of salary or wages is made to an employee,—

“(a) For a pay period that ended before that date; or

“(b) Where section fifteen of this Act applies, for services rendered in a week that ended before that date,— the amount of the tax deduction to be made or, as the case may be, the amount of the total tax deduction required to be made, shall be calculated in accordance with the tax deduction in force in that pay period or week.”

(2) This section shall come into force on the first day of October, nineteen hundred and fifty-nine.

37. Pay-period taxpayers—Section twenty-two of the Income Tax Assessment Act 1957 is hereby further amended by inserting in subsection one, after paragraph (a), the following paragraph:

“(aa) The employee is not an absentee within the meaning of Part VI of the principal Act, as defined in section seventy-six of that Act; and”.

38. Tax of pay-period taxpayers to be determined by amount of tax deductions or by averaging assessment—The Income Tax Assessment Act 1957 is hereby further amended by repealing section twenty-three, and substituting the following section:

“23. (1) Notwithstanding anything to the contrary in the principal Act, the amount of income tax for which a pay-period taxpayer to whom section twenty-six of this Act does not apply is liable in respect of the income derived by the taxpayer in any year shall be determined exclusively and finally by the total amount of the tax deductions required under this Part of this Act to be made from that income, except where the taxpayer has, not later than the end of the next succeeding year or within such further period as the Commissioner in his discretion may allow in any case or class of cases, furnished to the Commissioner a return of that income, in which case the amount of that income tax shall be the smaller of the following amounts:

“(a) The total amount of those tax deductions:

“(b) The amount of the income tax that would be payable in respect of that income under an assessment made pursuant to the provisions of section twenty-six B of this Act.

“(2) Except where a return of income is furnished for the purpose of having the amount of income tax in respect of the income for the year assessed pursuant to the provisions of section twenty-six B of this Act, a pay-period taxpayer to whom this section applies shall not furnish a return of income for the year unless he is required by the Commissioner so to do.”

39. Adjustment of excessive tax deductions—The Income Tax Assessment Act 1957 is hereby further amended by repealing section twenty-five, and substituting the following section:

“25. Where—

“(a) The amount of income tax for which a pay-period taxpayer is liable in respect of the income derived by him in any year is determined exclusively and finally, pursuant to the provisions of subsection one of section twenty-three of this Act, by the total amount of the tax deductions required under this Part of this Act to be made from that income; and

“(b) The Commissioner is satisfied that the total amount of the tax deductions made from payments of that income to the taxpayer is in excess of the total amount of the tax deductions required under this Part of this Act to be made from that income,—

the Commissioner, upon application in that behalf made in writing not later than six years after the end of that year, shall pay to the taxpayer the amount of that excess or, at the option of the Commissioner, credit that amount in payment of any tax due by the taxpayer and unpaid.”

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40. Adjustments where tax deductions not in accordance with special exemptions for dependants, or for excess insurance and superannuation contributions—(1) The Income Tax Assessment Act 1957 is hereby further amended by repealing section twenty-six, and substituting the following section:

“26. (1) Where in any year—

“(a) A tax deduction has been made from a payment of income from employment made to a pay-period taxpayer; and

“(b) The amount of the tax deduction was determined on the basis that some person was a dependant of the taxpayer; and

“(c) It transpires that in that year the taxpayer, on an assessment of ordinary income tax under Part VI of the principal Act, would not have been entitled to a special exemption in respect of that person, or would have been entitled only to a portion of a special exemption,—

the taxpayer shall furnish to the Commissioner, at such time as the Commissioner may require, a return of the income derived by him in that year, and the amount of income tax for which the taxpayer is liable in respect of that income shall be the amount of income tax that is payable under an assessment made pursuant to the provisions of section twenty-six B of this Act.

“(2) Where in any year—

“(a) Either—

“(i) A tax deduction has been made from a payment of income from employment made to a pay-period taxpayer, and the amount of the tax deduction was determined on the basis that some person was not a dependant of the taxpayer, and it transpires that in that year the taxpayer, on an assessment of ordinary income tax under Part VI of the principal Act, would have been entitled to a special exemption in respect of that person; or

“(ii) A pay-period taxpayer, on an assessment of ordinary income tax under Part VI of the principal Act, would have been entitled to deductions by way of special exemption under section eighty-five of the principal Act in excess of the total of twenty-five pounds and of the amounts of the regular current contributions to a superannuation fund subtracted in that year from the taxpayer’s salary or wages under section ten of this Act; and

“(b) The taxpayer has, not later than the end of the next succeeding year or within such further period as the Commissioner in his discretion may allow in any case or class of cases, furnished to the Commissioner a return of the income derived by him in the first-mentioned year,—

the amount of income tax for which the taxpayer is liable in respect of that income shall be the amount of income tax that is payable under an assessment made pursuant to the provisions of section twenty-six B of this Act.”

(2) Section twenty-seven of the Income Tax Assessment Act 1957 is hereby repealed.

41. Tax payable by certain taxpayers receiving withholding payments—The Income Tax Assessment Act 1957 is hereby further amended by inserting, after section twenty-six, as substituted by section forty of this Act, the following section:

“26A. (1) This section shall apply to an employee in an income year, if in that year—

“(a) The total income derived by the employee (whether assessable or non-assessable) did not exceed the total of one thousand and forty pounds; and

- “(b) The employee did not derive any assessable income, except—
- “(i) Withholding payments (not being withholding payments that are deemed by regulations made under the principal Act to be income from employment); or
 - “(ii) Such withholding payments and income from employment; and
- “(c) Section one hundred and four of the principal Act (which relates to the aggregation of incomes) did not apply to the assessment for income tax of the employee and the spouse of the employee; and
- “(d) The employee is not—
- “(i) A trustee assessable and liable for income tax under paragraph (b) of section one hundred and fifty-five of the principal Act; or
 - “(ii) A company; or
 - “(iii) An unincorporated body; or
 - “(iv) An absentee within the meaning of Part VI of the principal Act, as defined in section seventy-six of that Act.

“(2) Notwithstanding anything to the contrary in the principal Act, where this section applies to an employee in an income year, the amount of income tax for which the employee is liable in respect of the income derived by him in that year shall be the amount of income tax that is payable under an assessment made pursuant to the provisions of section twenty-six B of this Act.”

42. Calculation of income tax on basis of average weekly income—The Income Tax Assessment Act 1957 is hereby further amended by inserting, after section twenty-six A, as inserted by section forty-one of this Act, the following section:

“26B. (1) In this section—

“‘Adjustable income’ means the residue of the assessable income in relation to ordinary income tax after subtracting from that income the partial special exemptions to which the taxpayer is entitled:

“‘Partial special exemptions’ means the total of all deductions to which the taxpayer would, on an assessment of ordinary income tax under Part VI of the principal Act, be entitled in the income year by way of special exemption—

“(a) Under sections eighty to eighty-four of the principal Act in excess of the deductions under those sections that are taken into account in the taxpayer’s terminal tax code; and

“(b) Under section eighty-five of the principal Act in excess of twenty-five pounds,—

but not exceeding the amount by which the assessable income in relation to ordinary income tax exceeds the total of the deductions by way of special exemption under sections eighty to eighty-four of the principal Act that are taken into account in the taxpayer’s terminal tax code:

“‘Terminal tax code’, in relation to an income year, means such one of the codes in subsection one of section thirteen of this Act as would apply to the taxpayer on the last day of the income year or on the day of the death of the taxpayer during that year, if there were taken into account as dependants only those persons in respect of whom the taxpayer would, on an assessment of ordinary income tax under Part VI of the principal Act, be entitled to maximum deductions by way of special exemption authorised by sections eighty-one to eighty-four of the principal Act, and if the taxpayer, being an employee, had done all things necessary to have that code applied to him, or if the taxpayer, not being an employee, were an employee and had done all such things.

“(2) Notwithstanding anything to the contrary in the principal Act or in any other section of this Act, but subject to this section and to section twenty-three of this Act, wherever the principal Act or this Act provides for the amount of income tax in respect of the income derived by a taxpayer in any year to be the amount of income tax that is or would be payable under an assessment made pursuant to the provisions of this section, the amount of that income tax shall be determined exclusively and finally—

“(a) By calculating the amount of the tax deduction that would be required under this Part of this Act to be made in that year according to the taxpayer’s terminal tax code from a payment for a weekly pay-period of an amount of salary or wages that does not include overtime pay and is equal to one fifty-second of the taxpayer’s adjustable income for that year:

“Provided that, where the amount of that tax deduction has been varied during that year by an annual taxing Act or by an amendment of the basic tax deductions, the amount of the tax deduction for the purposes of this paragraph shall be the average of the amounts of all such tax deductions in force at any time during that year; and

“(b) By multiplying the amount of the tax deduction so calculated by fifty-two; and

“(c) By increasing the product of that multiplication by an amount, calculated at the rate at which social security income tax is payable for that year on the amount of the partial special exemptions to which the taxpayer is entitled in that year; and

“(d) By reducing that increased amount by an amount, calculated at the aforesaid rate of social security income tax on any part of the assessable income in relation to ordinary income tax that is exempt from social security income tax.

“(3) Where in any year—

“(a) The tax code that was applied to a taxpayer in respect of all payments of income from employment made to the taxpayer in that year has remained unchanged; and

“(b) That tax code was the same as the taxpayer’s terminal tax code; and

“(c) The total amount of the tax deductions required under this Part of this Act to be made from that income, on the basis of all those payments being payments of salary or wages (other than overtime pay) made by one employer at a uniform weekly rate for fifty-two weekly pay-periods throughout that year, would be in excess of the total amount of the tax deductions required under this Part of this Act to be made from that income, having regard to the factors affecting the amounts of the last-mentioned tax deductions,—

the amount of the income tax otherwise payable pursuant to an assessment made under subsection two of this section in respect of the income derived by the taxpayer in that year shall be reduced by the amount of that excess.

“(4) Where the Commissioner thinks fit in any case not provided for by the foregoing provisions of this section (whether by reason of a taxpayer being entitled to have any loss carried forward, or by reason of a taxpayer having

had applied to him in respect of payments of income from employment made to him in a year a tax code differing from his terminal tax code or more than one tax code, or by reason of a reduction having been made under section seventeen of this Act in any tax deduction, or by reason of any tax deduction having been made pursuant to a special tax code certificate issued under section eighteen of this Act, or for any other reason), and the taxpayer has, not later than the end of the year next succeeding the year in which he has derived income or within such further period as the Commissioner in his discretion may allow in any case or class of cases, furnished to the Commissioner a return of that income and made application in writing for a reduction under this subsection, the Commissioner may reduce the amount of income tax otherwise payable pursuant to an assessment made in accordance with the foregoing provisions of this section in respect of that income by such amount as in his opinion is equitable for the purpose of meeting the special circumstances of the case, and every reduction so made shall be deemed to have been made in accordance with this section."

43. Refund of tax deductions paid in excess—Section twenty-eight of the Income Tax Assessment Act 1957 is hereby amended as from the commencement of that Act by inserting, after subsection five, the following subsection:

"(5A) Subject to the provisions of section forty-three of the principal Act, in any case where an assessment of income tax has been altered after the end of the year following the year in which the original assessment was made, and by reason of that alteration an amount is to be refunded to the employee under subsection two of this section, the Commissioner shall not refund that amount to the employee unless written application for the refund is made by or on behalf of the employee."

44. Employer failing to make tax deductions—The Income Tax Assessment Act 1957 is hereby further amended as from its commencement by inserting, after section thirty-one, the following section:

"31A. (1) Where an employer fails to make any tax deduction in accordance with his obligations under this Part of this Act, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Commissioner, and shall be deemed to have become due and

payable to the Commissioner on the twentieth day of the month next after the month in which payment of the source deduction payment was made.

“(2) The right of the Commissioner to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Commissioner to recover that amount from the employee under this Part of this Act; and nothing in this Part of this Act shall be construed as preventing the Commissioner from taking such steps as he thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the employee or partly from the employer and partly from the employee.

“(3) Where any amount, including a penalty, recoverable in accordance with this Part of this Act from the employee is in fact paid by the employer, the amount so paid may be recovered by the employer from the employee.”

45. Amount of provisional tax where total income does not exceed £1,040—(1) Section forty-four of the Income Tax Assessment Act 1957 is hereby amended by adding to subsection four the following proviso:

“Provided that this subsection shall not apply to the provisional tax payable in respect of any income where that tax is an amount equal to an amount of income tax that is or would have been assessable under an assessment of income tax made pursuant to the provisions of section twenty-six B of this Act.”

(2) This section shall apply with respect to the provisional tax payable in respect of the income of the income year that commenced on the first day of April, nineteen hundred and fifty-nine, and of every subsequent year.

46. Estimated taxable income of provisional taxpayer—

(1) Section forty-nine of the Income Tax Assessment Act 1957 is hereby amended by repealing paragraph (a) of subsection one, and substituting the following paragraph:

“(a) The respective amounts of the taxpayer’s assessable income and taxable income for the income year, as estimated by the taxpayer:”.

(2) Section forty-nine of the Income Tax Assessment Act 1957 is hereby further amended by omitting from paragraph (b) of subsection one the word “taxable”, and substituting the word “assessable”.

(3) Section forty-nine of the Income Tax Assessment Act 1957 is hereby further amended by adding to subsection two the following proviso:

“Provided that, where the provisions of section fifty-four A of this Act would have applied to the taxpayer in the preceding year if the income derived by the taxpayer in that year had consisted exclusively of the respective amounts of the taxpayer’s assessable income and non-assessable income for the income year as estimated by the taxpayer, the amount of the provisional tax as aforesaid shall, subject to subsection three of this section, be an amount equal to the amount by which—

“(a) The income tax that would have been assessable in respect of the preceding year on an assessment of income tax made on the taxpayer pursuant to the provisions of section twenty-six B of this Act, if the assessable income derived by the taxpayer in that preceding year had consisted exclusively of the taxpayer’s estimated assessable income for the income year,—

exceeds—

“(b) The income tax that would have been assessable in respect of the preceding year on a similar assessment if the assessable income derived by the taxpayer in that preceding year had consisted exclusively of the estimated source deduction payments comprised in the taxpayer’s estimated assessable income for the income year.”

(4) Section forty-nine of the Income Tax Assessment Act 1957 is hereby further amended—

- (a) By inserting in subsection three, after the words “has reason to believe that”, the words “the assessable income, or”:
- (b) By inserting in subsection three, after the words “is greater than”, the words “the estimated assessable income, or”:
- (c) By inserting in subsection four, after the words “social security income tax respectively, of the”, the words “assessable income”.

(5) Section fifty of the Income Tax Assessment Act 1957 is hereby consequentially amended—

- (a) By omitting from paragraph (a) of subsection one the words “on the taxable income”, and substituting the words “in respect of the income”:

(b) By omitting from paragraph (a) of subsection one the words "comprised in the taxable income", and substituting the words "comprised in the assessable income":

(c) By omitting from subsection three and also from subsection four the word "taxable".

(6) This section shall apply with respect to the provisional tax payable in respect of the income of the income year that commenced on the first day of April, nineteen hundred and fifty-nine, and of every subsequent year.

47. Tax payable by certain provisional taxpayers—(1) The Income Tax Assessment Act 1957 is hereby further amended by inserting, after section fifty-four, the following section:

"54A. (1) This section shall apply to a provisional taxpayer in an income year, if in that year—

"(a) The total income derived by the taxpayer (whether assessable or non-assessable) did not exceed the total of one thousand and forty pounds; and

"(b) Section one hundred and four of the principal Act (which relates to the aggregation of incomes) did not apply to the assessment for income tax of the taxpayer and the spouse of the taxpayer; and

"(c) The taxpayer is not—

"(i) A trustee assessable and liable for income tax under paragraph (b) of section one hundred and fifty-five of the principal Act; or

"(ii) A company; or

"(iii) An unincorporated body; or

"(iv) An absentee within the meaning of Part VI of the principal Act, as defined in section seventy-six of that Act; or

"(v) A taxpayer assessable and liable for income tax (otherwise than by way of a tax deduction under Part II of this Act) at a fixed rate or a fixed percentage of the amount of any income derived by, or of any sum paid or payable to, him in that year.

"(2) Notwithstanding anything to the contrary in the principal Act, where this section applies to a provisional taxpayer in an income year, the amount of income tax for which the taxpayer is liable in respect of the income derived by him in that year shall be the amount of income tax that is payable under an assessment made pursuant to the provisions of section twenty-six B of this Act."

(2) Section fifty-five of the Income Tax Assessment Act 1957 is hereby repealed.

48. Refund of provisional tax paid in excess—Section fifty-seven of the Income Tax Assessment Act 1957 is hereby amended as from the commencement of that Act by inserting, after subsection two, the following subsection:

“(2A) Subject to the provisions of section forty-three of the principal Act, in any case where an assessment of income tax has been altered after the end of the year following the year in which the original assessment was made, and by reason of that alteration an amount is to be refunded to the taxpayer under subsection one of this section, the Commissioner shall not refund that amount to the taxpayer unless written application for the refund is made by or on behalf of the taxpayer.”

49. Deputies of members of Transitional Income Tax Appeal Authority—Section seventy of the Income Tax Assessment Act 1957 is hereby amended as from the commencement of that Act by inserting, after subsection two, the following subsections:

“(2A) A deputy for any member of the Appeal Authority may at any time be appointed in the manner in which that member was appointed, to act—

“(a) For that member, while he remains in office, at any meeting of the Appeal Authority which that member does not attend:

“(b) In place of that member, if he vacates office (whether by reason of death or resignation or otherwise), until the member’s successor is appointed or the deputy’s appointment is sooner revoked.

“(2B) Every such deputy, while acting for or in place of a member, shall for all purposes be deemed to have been appointed to the office of that member, and, in the case of a deputy for the Chairman, shall while so acting be the Chairman of the Appeal Authority.”

50. Consequential amendments—(1) Section twenty-seven A of the Income Tax Assessment Act 1957, as inserted by section forty-six of the Land and Income Tax Amendment Act (No. 2) 1958, is hereby amended by repealing subsection one, and substituting the following subsection:

“(1) Subject to sections twenty-three, twenty-six, twenty-six A, twenty-six B, and fifty-four A of this Act, the amount of income tax for which an employee is liable in respect of the income derived by him in any income year shall be assessed under Part VI of the principal Act.”

(2) The Income Tax Assessment Act 1957 is hereby further amended as follows:

- (a) By omitting from subsection two of section twenty-seven A, as so inserted, the words "under any such assessment", and substituting the words "in respect of that income under any assessment made pursuant to the provisions of section twenty-six B of this Act or of Part VI of the principal Act":
- (b) By inserting in subsection one of section twenty-eight, after the words "is required to furnish", the words "or who furnishes":
- (c) By omitting from subsection one of section fifty-six, as substituted by section fifty-two of the Land and Income Tax Amendment Act (No. 2) 1958, the words "twenty-four and fifty-five", and substituting the words "twenty-six B and fifty-four A":
- (d) By omitting from subsection two of section fifty-six, as so substituted, the words "under any such assessment", and substituting the words "in respect of that income under any assessment made pursuant to the provisions of section twenty-six B of this Act or of Part VI of the principal Act":
- (e) By omitting from subsection one of section fifty-seven the words "to whom section fifty-five of this Act does not apply".

51. Interim returns—(1) Section fifty of the Land and Income Tax Amendment Act (No. 2) 1958 is hereby amended as from the commencement of that Act by omitting from subsection one the words "The principal Act" where they first occur, and substituting the words "The Income Tax Assessment Act 1957".

(2) It is hereby declared that nothing in section fifty of the Land and Income Tax Amendment Act (No. 2) 1958 shall be deemed to have operated as a repeal of section forty-eight of the principal Act or to have substituted any section in its place, and the said section forty-eight shall be deemed to have continued in full force accordingly.
