

- (1) neither the name and address of the accused nor the name and address of the registered owner of the vehicle, could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or
 - (2) the accused by his own conduct contributed to the failure; and
- (ii) the requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.

Taking motor vehicle without owner's consent or other authority.
20 & 21 Geo. 5 C.43 S.28

8. (1) Every person who takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding \$1,000 :

Provided that if the Magistrate is satisfied that the accused acted in the reasonable belief that he had lawful authority, or in the reasonable belief that the owner would, in the circumstances of the case, have given his consent, if he had been asked therefor, the accused shall not be liable to be convicted of the offence.

(2) If on the trial of any indictment for stealing a motor vehicle the Jury are of opinion that the defendant was not guilty of stealing the motor vehicle but was guilty of an offence under this section, the Jury may find him guilty of an offence under this section and thereupon he shall be liable to be punished accordingly.

Disclosure of information to the Police.
20 & 21 Geo. 5 C.43 S.113

9. Where the driver of a vehicle is alleged to be guilty of an offence under this Ordinance—

- (a) the owner of the vehicle shall give such information as he may be required by or on behalf of the Commissioner of Police to give as to the identity of the driver, and, if he fails to do so shall be guilty of an offence, unless he shows to the satisfaction of the Judge or Magistrate that he did not know and could not with reasonable diligence have ascertained who the driver was; and
- (b) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver, and, if he fails to do so, he shall be guilty of an offence.

Disqualification for offences and endorsement of convictions.
20 & 21 Geo. 5 C. 43 Ss. 6 & 7.

10. (1) Any Judge or Magistrate before whom a person is convicted of any offence under sections 4, 5 or 6 of this Ordinance, or of manslaughter in connection with the driving of a motor vehicle—

- (a) may in any case, except where otherwise expressly provided by this Ordinance, and shall where so required by this Ordinance, order him to be disqualified for holding or obtaining a licence to drive a motor vehicle for such period as the Judge or Magistrate thinks fit; and
- (b) may in any case, and shall where a person is by virtue of a conviction disqualified for holding or obtaining a licence, or where an order so disqualifying any person is made or where so required by this Ordinance, order that particulars of the conviction

and of any disqualification to which the convicted person has become subject shall be endorsed on any licence to drive a motor vehicle held by the offender :

Provided that, if the Judge or Magistrate thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed.

(2) A person who by virtue of an order of a Judge or Magistrate under this Ordinance is disqualified for holding or obtaining a licence may appeal against the order in the same manner as against a conviction, and the Judge or Magistrate may, if he thinks fit, pending the appeal, suspend the operation of the order.

(3) Where a person who is disqualified by virtue of a conviction or order under this Ordinance is the holder of a licence, the licence shall be suspended as long as the disqualification continues in force.

(4) A licence suspended under the provisions of this section shall during the time of suspension be of no effect.

11. (1) An order that the particulars of any conviction or of any disqualification to which the convicted person has become subject are to be endorsed on any licence held by the offender shall, whether the offender is at the time the holder of a licence or not, operate as an order that any licence he may then hold or may subsequently obtain, shall be so endorsed until he becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

Provisions as to endorsements.
20 & 21 Geo. 5 C.43 S.8

(2) Where an order is made requiring any licence held by an offender to be endorsed, then—

- (a) if the offender is at the time the holder of a licence, he shall, if so required by the Judge or Magistrate, produce the licence within five days or such longer time as the Judge or Magistrate may determine for the purpose of endorsement; and
- (b) if he is not then the holder of a licence, but subsequently obtains a licence, to drive a motor vehicle he shall within five days after so obtaining the licence produce it to the Judge or Magistrate for the purpose of endorsement;

and if he fails to do so, he shall be guilty of an offence; and if the licence is not produced for the purpose of endorsement within such time as aforesaid, it shall be suspended from the expiration of such time until it is produced for the purpose of endorsement.

(3) On the issue of a new licence to any person, the particulars endorsed on any previous licence held by him shall be copied on to the new licence unless he has previously become entitled under the provisions of this section to have a licence issued to him free from endorsement.

(4) If any person whose licence has been ordered to be endorsed and who has not previously become entitled under the provisions of this section to have a licence issued to him free from endorsement applies for or obtains a licence without giving particulars of the order, he shall be liable on summary conviction to imprisonment for a term not exceeding six months, and any licence so obtained shall be of no effect.

(5) Where a person in respect of whom an order has been made under this Ordinance, requiring the endorsement of any licence held by him, has during a continuous period of three years or upwards since the order was made had no such order made against him, he shall be entitled, either on applying for the grant of a licence under this Ordinance, or, subject to payment of a fee of five dollars and subject to surrender of any subsisting licence, at any time, to have issued to him a new licence free from endorsements :

Provided that, in reckoning the said period of three years, any period during which the person was by virtue of the order disqualified for holding or obtaining a licence shall be excluded.

(6) Where a Judge or Magistrate orders particulars to be endorsed on a licence held by any person, or where by a conviction or order of a Judge or Magistrate a person is disqualified for holding or obtaining a licence, the Judge or Magistrate shall send notice of the conviction or order to the licensing authority by which the licence was granted, and, in a case where a person is so disqualified, shall also on the production of the licence for the purpose of endorsement retain the licence and forward it to the authority by which it was granted, and that authority shall keep the licence until the disqualification has expired or been removed and the person entitled to the licence has made a demand in writing for its return to him.

Where the disqualification to which a person has become subject is limited to the driving of a motor vehicle of a particular class or description, the licensing authority to whom that person's licence has been forwarded under this subsection shall forthwith after the receipt thereof issue to that person a new licence on which there shall be indicated in the prescribed manner the class or description of vehicle which the holder of the licence is not thereby authorised to drive, and the licence so issued shall remain in force either for the unexpired period of the original licence or for the period of the disqualification, whichever is the shorter.

(7) Where on an appeal against any such order the appeal is allowed, or where any such conviction is quashed, the Judge by which the appeal is allowed or the conviction is quashed shall send notice thereof to the licensing authority by which the licence was granted.

12. (1) Particulars of a conviction endorsed on a licence to drive a motor vehicle may be produced as *prima facie* evidence of the conviction.

(2) Where a person is prosecuted for driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment, or for an offence under sections 4, 5 or 6, then, if at the time of the alleged offence he is the holder of a licence to drive a motor vehicle he shall either cause it to be delivered to the Magistrate's clerk not later than the day before the date appointed for the hearing, or send it by registered letter duly addressed to the clerk and posted at such a time that in the ordinary course of post it would be delivered not later than that day, or have it with him at the hearing and, if he is convicted of the offence, the Magistrate may require the licence to be produced to him.

Provisions as to certain legal proceedings. 24 & 25 Geo. 5 C.50 S.33

(3) If default is made in the production of a licence pursuant to a requirement under the last foregoing subsection, the holder shall be guilty of an offence, and the licence shall be suspended from the time of the requirement until it is produced to the Magistrate.

13. Upon the trial of a person who is indicted for manslaughter in connection with the driving of a motor vehicle by him, it shall be lawful for the Jury, if they are satisfied that he is guilty of an offence under section 4 to find him guilty of that offence, whether or not the requirements of section 7 have been satisfied as respects that offence.

14. (1) Any person convicted of an offence against the provisions of this Ordinance or of any regulation made under the provisions of this Ordinance or of any condition upon which any licence has been issued to or is held by such person under the provisions of this Ordinance or any regulation made under the provisions of this Ordinance may be ordered by the Judge or Magistrate to pay to any person to whom such Judge or Magistrate may think that any compensation should be paid in respect of any injury, loss, or otherwise, compensation not exceeding three hundred dollars, in addition to the penalty provided for under the provisions of this Ordinance, and in default of payment of such compensation the Magistrate may order the person ordered to pay the same to be imprisoned for any term not exceeding two months in respect of such default.

(2) The payment of such compensation or imprisonment in default thereof shall be a bar to any further proceedings at the suit of the person to whom any such compensation has been ordered to be made :

Provided that no such order for the payment of any such compensation shall be made unless the party who has suffered any such injury, or loss or otherwise sustained damage consents thereto.

15. Any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any Regulation made under the provisions of Section 3 of this Ordinance, or of any condition upon which any licence under the provisions of this Ordinance or the Regulations made hereunder has been issued shall be guilty of an offence against this Ordinance and where no other penalty is provided shall on summary conviction be liable in respect of each offence to a fine not exceeding five hundred dollars and to imprisonment for a term not exceeding six months.

16. The Vehicles and Traffic Regulation Ordinance, 1912, and the Vehicles and Traffic Regulation (Amendment) Ordinance, 1946, are hereby repealed.

Passed the Legislative Council of Hong Kong, this 27th day of March, 1947.

[Handwritten signature]

Deputy Clerk of Councils.

Power to convict for reckless or dangerous driving on trial for manslaughter. 24 & 25 Geo. 5 C.50 S.34

Compensation for injury, how granted.

Compensation a bar to legal proceedings but at option of complainant

Penalty.

Repeal.

HONG KONG.

No. 18 OF 1947.



I assent.

Mark Young

Governor.

29th March, 1947.

An Ordinance to apply a sum not exceeding one hundred and nine million eight hundred and thirty four thousand three hundred and fifty five dollars to the Public Service of the financial year ending 31st March, 1948.

[29th March, 1947.]

WHEREAS the expenditure required for the service of this Colony for the financial year ending on the 31st March, 1948 has been estimated at the sum of one hundred and nine million eight hundred and thirty four thousand three hundred and fifty five dollars.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:

1. This Ordinance may be cited as the Appropriation for 1947-1948 Ordinance, 1947.

Short
title.

2. A sum not exceeding one hundred and nine million eight hundred and thirty four thousand three hundred and fifty five dollars shall be and the same is hereby charged upon the revenue and other funds of the Colony for the service of the said financial year and the said sum so charged may be expended in the manner expressed in the Schedule to this Ordinance:—

Appropriation from
general
revenues.

SCHEDULE.

No. of Vote	Title of Vote	Amount of Vote \$
1.	H.E. The Governor	185,498
2.	Colonial Secretariat and Legislature	535,000
3.	Audit Department	147,434
4.	Charitable Services	193,860
5.	Development Secretariat	953,622



SCHEDULE,—(Continued).

<i>No. of Vote</i>	<i>Title of Vote</i>	<i>Amount of Vote \$</i>
6.	Directorate of Air Services	164,574
7.	District Office, North	122,668
8.	District Office, South	90,467
9.	Education Department	7,378,025
10.	Fire Brigade	630,436
11.	Harbour Department	3,539,033
12.	Hong Kong Naval Volunteer Force	4,978
13.	Hong Kong Volunteer Defence Corps	74,611
14.	Imports and Exports Department	612,957
15.	Judiciary	397,722
16.	Kowloon-Canton Railway	5,021,762
17.	Labour Office	156,777
18.	Legal Departments	340,473
19.	Medical Department	12,523,646
20.	Miscellaneous Services	30,347,828
21.	Pensions	4,463,000
22.	Police Force	5,966,943
23.	Post Office	3,145,595
24.	Public Relations Office	53,720
25.	Prisons Department	2,201,618
26.	Public Debt	7,838,148
27.	Public Works Department	2,798,202
28.	Public Works Recurrent	7,923,000
29.	Public Works Extraordinary	7,000
30.	Royal Observatory	203,822
31.	Sanitary Department	1,953,631
32.	Secretariat for Chinese Affairs	258,776
33.	Stores Department	7,908,241
34.	Treasury	613,528
35.	Supplies, Trade and Industry Departmen	643,754
36.	Custodian of Property	92,998
37.	Inland Revenue Department	341,008
	Total	<u>109,834,355</u>

Passed the Legislative Council of Hong Kong, this 28th day of
March, 1947.


[Signature]

Deputy Clerk of Councils.

HONG KONG.

No. 19 OF 1947.

I assent.



Mark Young

Governor.

25th April, 1947.

An Ordinance to provide for the exhibition of British Cinematograph Films and to restrict the advance booking of cinematograph films.

[25th April, 1947.]

BE it enacted by the Governor of Hong Kong with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

Preliminary.

1. This Ordinance may be cited as the British Cinematograph Films Ordinance, 1947. Short Title.

2. In this Ordinance unless the context otherwise requires— Interpretation.

“British Films” means all cinematograph films registered in Great Britain as British films after 1940 under the Cinematograph Films Act, 1938.

“Controller” means the person appointed under the provisions of section 3 to be the Controller of the Exhibition of Cinematograph Films;

“exhibitor” means the person or persons carrying on the business of exhibiting cinematograph films to the public at a cinema theatre to which this Ordinance applies;

“film” means a cinematograph film;

“quota period” means each consecutive and succeeding period of seventy days the first period of which shall be calculated from the coming into force of this Ordinance;

“serial films” or “series of films” means a serial cinematograph film or series of cinematograph films consisting of a number of parts not exceeding thirteen each of which does not exceed two thousand feet in length, and which are intended to be exhibited on successive dates at intervals not exceeding fourteen days.

Power to appoint a Controller.

3. The Governor in Council by notification in the Gazette may appoint either by name or as holding any office for the time being a person to be the Controller of the Exhibition of Cinematograph films.

Cinema theatres to which Ordinance applies.

4. This Ordinance applies to

(a) all cinema theatres known in the cinematograph film trade as "first run theatres", that is to say, cinema theatres ordinarily shewing English language films for the first time in the town or locality in which they are situate.

(b) all cinema theatres known in the cinematograph film trade as "second run theatres", that is to say, cinema theatres ordinarily shewing English language films for the second time in the town or locality in which they are situate.

PART II.

British Film Quota.

British Films to be shown on 7 days in each quota period.

5. (1) Subject to any exemption granted under sub-section (2) of this section, British films, one of which shall be at least five thousand feet long, of a total length of not less than eight thousand feet shall be exhibited at every public performance on not less than seven days in each quota period at every cinema theatre to which this Ordinance applies which is open to the public during any quota period or part thereof.

Controller may grant exemption.

(2) If, by reason of a shortage of British films or for any other reason, it shall appear to the Controller that it will be impossible or unreasonable, during any quota period, for the requirements of sub-section (1) of this section to be complied with in respect of any cinema theatre to which this Ordinance applies, the Controller may, upon such terms as he may think fit to impose, grant in respect of such cinema theatre such partial or complete exemption from compliance with the requirements of subsection (1) of this section as shall appear to him reasonable. Any decision made by the Controller under the provisions of this sub-section shall be final and conclusive.

Exhibitors to furnish statements and declarations as to compliance with section 5.

6. Every exhibitor shall furnish to the Controller:

(a) during the first seven days of each quota period a written statement as to the manner in which, subject to the terms upon which any exemption under sub-section (2) of section 5 may have been granted, it is proposed to comply with the requirements of sub-section (1) of section 5 during such quota period, and

(b) during the first seven days of the second quota period and thereafter during the first seven days of each succeeding quota period, a declaration as to the manner in which, subject to the terms upon which any exemption under sub-section (2) of section 5 may have been granted, the requirements of sub-section (1) of section 5 were complied with during the last preceding quota period.

PART III.

Advance Booking.

7. No person shall give any such undertaking (whether for a consideration or not and whether orally or in writing) as would, if it were legally binding on him, impose on him an obligation, either actual or contingent to take delivery of any film for public exhibition at a cinema to which this Ordinance applies at a date later than six months after the date on which he gives the undertaking:

Restriction on advance booking of films.

Provided that in relation to any serial film this section shall not operate so as to restrict the making of an agreement in so far as it provides for any part of the serial film or series being exhibited after three parts thereof have been exhibited to the public in a cinema theatre to which this Ordinance applies.

8. Any agreement made after the coming into force of this Ordinance shall be invalid if and so far as it purports to impose on any person an obligation, either actual or contingent, to take delivery of a film for public exhibition at a cinema theatre to which this Ordinance applies at a date later than six months after the date on which the agreement is made:

Invalidation of agreements involving advance booking.

Provided that the provisions of this section shall not apply in relation to any agreement the making of which is unrestricted by virtue of the proviso to section 7.

PART IV.

Offences and Penalties.

9. Any person who

Penalties.

(a) contravenes or fails to comply with any of the provisions of this Ordinance or any term upon which exemption is granted under the provisions of sub-section (2) of section 5 hereof; or

(b) makes any false statement in a declaration furnished in accordance with paragraph (b) of subsection (1) of section 6 hereof shall be guilty of an offence against this Ordinance and liable on conviction upon indictment to a fine not exceeding seventy thousand dollars and to imprisonment for a term not exceeding six months, or upon summary conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding three months.

10. Without prejudice to the provisions of section 37 of the Magistrates Ordinance, 1932, and section 7 of the Accessories and Abettors Ordinance, 1929, any person who attempts to commit any offence against this Ordinance or solicits or incites or endeavours to persuade another person to commit an offence or does any act preparatory to the commission of an offence shall be guilty of an offence, and shall be liable to the same punishment and to be proceeded against in the same manner as if he had committed the offence.

Attempts and acts preparatory to commission of offences.

Offences by corporations.

11. Where a person convicted of an offence against this Ordinance is a body corporate, the chairman and every director and every officer of such body corporate at the time such offence was committed shall be guilty of that offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Responsibility for acts of partners, agents, and servants.

12. (1) Any person who would have been liable under this Ordinance to any pecuniary penalty for anything done or omitted if such thing had been done or omitted by him personally shall be liable to the same penalty if such thing has been done or omitted by his partner, agent, or servant, acting in the capacity of partner, agent or servant.

Power of employer to exempt himself on conviction of actual offender.

(2) Where any employer is charged with an offence against this Ordinance, he shall be entitled to have any other person whom he charges as the actual offender brought before the Court and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

- (a) that he has used due diligence to enforce the execution of this Ordinance, and
- (b) that the said other person had committed the offence in question without his knowledge, consent, or connivance, that other person shall be convicted of such offence and the employer shall be exempt from any penalty. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

Passed the Legislative Council of Hong Kong, this 24th day of April, 1947.

[Handwritten signature]

Deputy Clerk of Councils.

HONG KONG.

No. 20 of 1947.



I assent.

[Handwritten signature: Mark Young]

Governor.

2nd May, 1947.

An Ordinance to impose a Tax on Earnings and Profits.

[2nd May, 1947.]

BE it enacted by the Governor of Hong Kong with the advice and consent of the Legislative Council thereof, as follows:—

CHAPTER I.

1. This Ordinance may be cited as the Inland Revenue Ordinance, 1947. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“active partner”, in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;

“agent”, in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes—

(a) the agent, attorney, factor, receiver, or manager in the Colony of such person or partnership, and

(b) any person in the Colony through whom such person or partnership is in receipt of any profits or income arising in or derived from the Colony;

“Assessor” means an Assessor appointed under this Ordinance;

“Assistant Commissioner” means an Assistant Commissioner of Inland Revenue appointed under this Ordinance;

“authorized representative” means an individual authorized in writing by any person to act on his behalf for the purposes of this Ordinance who is—

- (a) in any case—
 - (i) an accountant approved by the Commissioner,
 - (ii) a solicitor, or counsel instructed by a solicitor,
 - (iii) an employee regularly employed by the person concerned, or
 - (iv) any other person approved by the Commissioner;

- (b) in the case of an individual, a relative;
- (c) in the case of a company, a director or officer of the company;
- (d) in the case of a partnership, a partner;
- (e) in the case of a body of persons, a member;

Ordinance
No. 7 of
1886.

“basis period” for any year of assessment is the period on the profits of which tax for that year falls to be computed.

“bill of sale” means a bill of sale registrable under the Bills of Sale Ordinance, 1886;

“British Empire” means the United Kingdom of Great Britain and Northern Ireland, the Dominions, India, Burma, the territories administered by His Majesty's Governments in the Dominions under Mandate or otherwise, the British Colonies and protected States and the Mandated Territories of Palestine, Tanganyika, the Cameroons under British Mandate and Togoland under British Mandate;

“business” includes agricultural undertaking and poultry and pig rearing;

“Commissioner” includes the Commissioner of Inland Revenue appointed under this Ordinance, and the Deputy Commissioner, and an Assistant Commissioner specially authorized by the Commissioner either generally or for some specific purpose to act on behalf of the Commissioner;

“corporation” means any company which is either incorporated or registered under any enactment or charter in force in the Colony or elsewhere;

Ordinance
No. 39 of
1932.

“debenture” means a debenture as defined in section 348 (1) of the Companies Ordinance, 1932;

“Deputy Commissioner” means the Deputy Commissioner of Inland Revenue appointed under this Ordinance;

“executor” means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;

“incapacitated person” means any minor, lunatic, idiot, or person of unsound mind;

“income arising in or derived from the Colony” for the purposes of Chapter III, shall, without in any way limiting the meaning of the term, include all income derived from services rendered in the Colony;

Ordinance
No. 8 of
1921.

“mortgage” means a mortgage as defined in section 3 (19) of the Stamp Ordinance, 1921;

“Ordinance” includes any Ordinance amending or substituted for the Ordinance referred to, and any rules, regulations, or by-laws under any of such Ordinances;

“owner,” in relation to land and/or improvements thereon, includes a person who holds such land and/or improvements subject to a ground rent or other annual charge;

“person” includes a company, partnership, or body of persons;

“precedent partner” means the partner who, of the active partners resident in the Colony—

(a) is first named in the agreement of partnership; or

(b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or

(c) is first named in any statutory statement of the names of the partners;

“prescribed” means prescribed by or in pursuance of this Ordinance;

“profits” means the net profits for any period calculated in accordance with the provisions of Chapter IV of this Ordinance, but does not include profits arising from the sale of capital assets;

“profits arising in or derived from the Colony” for the purposes of Chapter IV shall, without in any way limiting the meaning of the term, include all profits from business transacted in the Colony, whether directly or through an agent;

“receiver” includes any receiver or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy;

“tax” means any tax imposed by this Ordinance;

“trade” includes every trade and manufacture, and every adventure and concern in the nature of trade;

“trustee” includes any trustee, guardian, curator, manager, or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“year of assessment” means the period of twelve months commencing on the first day of April, nineteen hundred and forty seven, and each subsequent period of twelve months commencing on the first day of April;

“year preceding a year of assessment” means the period of twelve months ending on the thirty-first day of March immediately prior to such year of assessment;

3. (1) (a) There shall be a Board of Inland Revenue composed of the Financial Secretary and four other members appointed by the Governor, of whom not more than one shall be an official in the employment of the Government. A member so appointed shall hold office until he shall resign or be removed from office by the Governor.

Board of
Inland
Revenue.

(b) Three members of the Board of Inland Revenue shall form a quorum for the transaction of business and when the Financial Secretary is present he shall be the Chairman.

(c) All matters coming before the Board of Inland Revenue shall be decided by a majority of votes, and in the case of an equality of votes the Chairman or presiding member shall have a second or a casting vote.

(2) For the purposes of this Ordinance, the Governor may appoint a Commissioner, a Deputy Commissioner, Assistant Commissioners, and Assessors.

(3) An Assistant Commissioner exercising or performing any power, duty, or function of the Commissioner under this Ordinance shall be deemed for all purposes to be authorized to exercise or perform the same until the contrary is proved.

(4) All powers conferred upon an Assessor by this Ordinance may be exercised by an Assistant Commissioner.

4. (1) Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any persons to carry out the provisions of this Ordinance

Official
secretary.

shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his authorized representative, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.

(2) Every person appointed under or employed in carrying out the provisions of this Ordinance, shall before acting under this Ordinance take and subscribe before a Justice of the Peace an oath of secrecy in the prescribed form.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

(4) Notwithstanding anything contained in this section, the Commissioner or any officer of the Inland Revenue Department authorized by the Commissioner in that behalf may communicate any matter which comes to his knowledge, including a copy of any return, accounts or other document submitted to him in connection with this Ordinance—

(a) to the Assessor appointed under Section 3 of the Rating Ordinance, 1901, to the Collector of Stamp Revenue, or to the Estate Duty Commissioner, or

(b) to the Income Tax Authority of any part of His Majesty's dominions or of any place under His Majesty's protection or suzerainty to such an extent as the Commissioner may deem necessary to enable the correct relief to be given from income tax in that part or place in respect of the payment of tax under this Ordinance.

(5) Notwithstanding anything contained in this section, the Commissioner may permit the Auditor or any officer of the Department of the Auditor duly authorized by him in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any officer authorized by him under this subsection shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2).

5. For the purpose of charging Tax under this Ordinance the standard rate for the year of assessment 1947/48 shall be ten per cent.

CHAPTER II.
Property Tax.

6. Property tax shall be charged on and borne by the owner of any land and/or buildings wherever situate in the Colony at the standard rate on the rateable value of such land and/or buildings as assessed for rating purposes under the Rating Ordinance, 1901, less an allowance for repairs and outgoings of 20 per cent. of the said rateable value:

Provided that—

- (i) For the year of assessment 1947/48 and any subsequent year of assessment on the first day of which rents are restricted by reference to rents recoverable on or before 25th December, 1941, under the provisions of Proclamation No. 15 (Landlord and Tenant

Standard rate.

Imposition of Property Tax.

Ordinance No. 6 of 1901.

of 1945 or any proclamation or ordinance in amendment or replacement thereof, Property Tax shall be charged at one-half the standard rate;

- (ii) Where no assessment has been made under the Rating Ordinance, 1901, the rateable value shall be determined by the Assessor appointed under Section 3 of that Ordinance;
- (iii) In the case of the New Territories other than New Kowloon, the rateable value for the purpose of Property Tax shall be taken at one-fourteenth of the value of the buildings as assessed under the Rating Ordinance, 1901;
- (iv) Where the owner of the land is not the owner of the buildings thereon, a separate assessment shall be made for the land and for the buildings;
- (v) Property tax shall not be charged on any land and/or buildings which are exempt from rates by virtue of section 39(2) of the Rating Ordinance, 1901.

7. Property tax shall be payable in the first place by the person, whether owner, agent or occupier, who pays the assessed rates in respect of the land and/or buildings taxed. Where such payment is made by any person other than the owner of the property then the amount so paid by way of property tax shall be a debt due from the owner and recoverable as such from any rent or other moneys due to him. Where such payment is made by any person other than the owner of the land and buildings then the amount so paid by way of Property Tax shall be a debt due from the person assessed under section 6.

By whom payable.

8. A proportionate refund of property tax may be made whenever any land and/or buildings is proved to the satisfaction of the Commissioner to have been unoccupied during one or more entire months of any year of assessment.

Refund in case of unoccupied property.

CHAPTER III.

Salaries and Annuities Tax.

9. Salaries and Annuities Tax shall be charged at the rates provided for in section 14 and subject to the allowances hereinafter provided on all income arising in or derived from the Colony in respect of—

Imposition of Salaries and Annuities Tax.

- (a) any office or employment of profit; and
- (b) any pension or annuity;

Provided that the following shall be exempt—

- (i) The official emoluments received by the officer administering the Government;
- (ii) the official emoluments of consuls, vice-consuls and persons employed on the staff of any consulate, who are subjects or citizens of the State which they represent;
- (iii) any sum received by way of commutation of pension or annuity and any sum, other than a pension, withdrawn from a provident fund;
- (iv) the emoluments payable by the Governments of the United Kingdom of Great Britain and Northern Ireland, His Majesty's Dominions and India to members of His Majesty's Forces and to persons in the permanent service of those Governments in the Colony in respect of their offices under those Governments;

(v) wound and disability pensions granted to members of His Majesty's Forces;

(vi) gratuities granted to members of His Majesty's Forces in respect of services rendered during war.

(vii) any income exempted by order of the Governor-in-Council under section 89;

(viii) the income of any individual who is not resident or is only temporarily resident in the Colony:

Provided in any case that—

(a) a person who stays in the Colony for a period or a number of periods amounting to more than one hundred and eighty days during a year of assessment shall be liable for that year of assessment, and

(b) a person whose stay in the Colony amounts in the aggregate to more than three hundred days during two consecutive years of assessment shall be liable for each such year of assessment.

Definition of income from employment.

10. (1) Income from any office or employment includes—

(i) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance for high cost of living, whether derived from the employer or others, except the value of any holiday warrant, passage, or free conveyance granted by an employer to an employee, or any allowance for the purchase of any such conveyance in so far as it is expended for such purpose;

(ii) the rental value of any place of residence provided rent-free by the employer;

(iii) where a place of residence is provided by an employer at a rent less than the rental value, the excess of the rental value over such rent.

(2) The rental of any place of residence shall be the rental value payable by the employer or if the place of residence is owned by the employer the rateable value arrived at in accordance with section 6: Provided that for the purposes of subsections (1) (ii) and (iii), any excess of rental value over—

(a) one-sixth of the income described in subsection (1) (i); or

(b) four thousand dollars, whichever is the lower amount,

shall be disregarded.

(3) For the purpose of this Chapter a pension or annuity includes any annual payment not being—

(a) income as defined in subsection (1) of this section,

(b) income chargeable to tax under Chapters II, IV or V,

(c) a return of capital,

and shall include a pension or annuity which is voluntary or is capable of being discontinued.

Aggregation of married persons' incomes.

11. The income as defined in section 10 of a married woman who is not living apart from her husband under the decree of a competent court or a duly executed deed of separation shall, for the purposes of this Chapter, be deemed to be the income of her husband and shall be chargeable accordingly: Provided that such part of the total amount of the tax charged to the husband as appears to the Commissioner to be charged in respect of the income of the wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her, and the provisions of

this Ordinance as to collection and recovery of tax shall apply accordingly.

12. (1) Save as provided in this section, the assessable income chargeable to Salaries and Annuities Tax for any year of assessment shall be the income of the recipient as defined in Section 10 arising in the year preceding the year of assessment: Provided that for the year of assessment 1947/48 a person assessable to Salaries and Annuities Tax, by giving notice in writing to the Commissioner on or before the thirty-first day of March, 1949, may require that his assessment be adjusted to the income as defined in Section 10 arising during that year of assessment.

Ascertainment of assessable income.

(2) Where a person commences to receive income chargeable to Salaries and Annuities Tax on a day within a year of assessment, his assessable income for that year of assessment shall be his income arising in the period from such day to the end of the year of assessment.

(3) Where a person has commenced to receive income chargeable to Salaries and Annuities Tax on a day within the year preceding the year of assessment, his assessable income for that year of assessment shall be his income arising in one year from such day.

(4) Where a person ceases to receive income chargeable to Salaries and Annuities Tax his assessable income for the year of assessment in which the cessation occurs shall be his income arising in the period beginning on the first day of April in that year and ending on the date of cessation.

13. Before arriving at the net chargeable income of an individual assessable to tax under this Chapter, there shall be deducted from his assessable income the following:—

Allowances.

(a) the allowances provided under Section 43; and

(b) any outgoings and expenses wholly exclusively and necessarily incurred in the production of that income.

14. Salaries and Annuities Tax shall be charged for each year of assessment upon the net chargeable income for that year calculated as provided by sections 10 to 13 at the following rates—

Rates of Salaries and Annuities Tax.

(a) Upon the first five thousand dollars at one-quarter of the standard rate.

(b) Upon the next five thousand dollars at one-half of the standard rate.

(c) Upon the next five thousand dollars at three-quarters of the standard rate.

(d) Upon the next five thousand dollars at the standard rate.

(e) Upon the next five thousand dollars at the standard rate plus one-quarter thereof.

(f) Upon the next five thousand dollars at the standard rate plus one-half thereof.

(g) Upon the next five thousand dollars at the standard rate plus three-quarters thereof.

(h) Upon the remainder at twice the standard rate.

Provided that where an individual is liable to tax under this Chapter for a part only of any year of assessment, the sums under (a), (b), (c), (d), (e), (f) and (g) of this section

shall be reduced in the proportion which the number of days during which he is so liable bears to the number of days in that year of assessment, and provided also that in no case shall the amount of Salaries and Annuities Tax chargeable on any individual exceed the amount which would have been chargeable on him had the standard rate of tax been charged on the whole of his income chargeable to Salaries and Annuities Tax before deducting the allowances provided in Section 13.

CHAPTER IV.

Profits Tax.

Imposition of Corporation Profits Tax.

15. Corporation Profits Tax shall, subject to the provisions of this Ordinance, be charged on every corporation carrying on trade or business in the Colony at the standard rate, in respect of the profits arising in or derived from the Colony from such trade or business.

Imposition of Business Profits Tax.

16. (1) Business Profits Tax shall, subject to the provisions of this Ordinance, be charged at the standard rate on every person other than a corporation carrying on trade, profession or business in the Colony in respect of the profits arising in or derived from the Colony from such trade, profession or business.

(2) Where the ultimate controlling interest in two or more trades, professions or businesses is owned by the same person, the Commissioner shall cause the profits and losses of those trades, professions or businesses to be aggregated and a single assessment thereon shall be made in the sum of the profits.

Provided that—

(i) where the profits assessable under this section from a trade, profession or business, or trades, professions or businesses aggregated under the provisions of subsection (2) of this section, do not exceed the sum of seven thousand dollars no tax shall be chargeable in respect thereof;

(ii) the Profits Tax payable by any person other than a corporation in respect of the profits from any trade, profession or business shall not be more than the amount by which the profits from such trade, profession or business exceed the sum of seven thousand dollars.

(iii) for the purpose of assessing the profits of a trade, profession or business, a husband and wife who are not living apart from each other under the decree of a competent court or a duly executed deed of separation shall be deemed to be one person.

Ascertainment of Profits.

17. (1) For the purpose of ascertaining the profits of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the basis period for the year of assessment by such person in the production of the profits, including—

(a) sums payable by such person by way of interest upon any money borrowed by him, provided that the interest was payable on capital employed in acquiring the profits;

(b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the profits;

(c) the allowances provided by Chapter VI (Depreciation)

(d) bad debts incurred in any trade, business or profession, proved to have become bad during the basis period for the year of assessment, and doubtful debts to the extent that they have become bad during the said basis period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said basis period, provided that all sums recovered during the said basis period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business or profession for that basis period;

(e) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this Ordinance.

18. (1) For the purpose of ascertaining profits no deduction shall be allowed in respect of—

Deductions not allowed.

(a) domestic or private expenses, including the cost of travelling between residence and place of business;

(b) any disbursements or expenses not being money expended for the purpose of producing the profits;

(c) any expenditure of a capital nature or any loss or withdrawal of capital;

(d) the cost of any improvements;

(e) any sum recoverable under an insurance or contract of indemnity;

(f) rent of, or expenses in connexion with, any premises or part of premises not occupied or used for the purpose of producing the profits;

(g) any tax paid or payable under this Chapter.

(2) In computing the profits or losses of a partnership, nothing shall be deducted for salaries or other remuneration of partners or for interest on partners' capital or loans.

19. (1) Save as provided in this section, the assessable profits liable to Profits Tax of any trade, profession or business for any year of assessment shall be the full amount of its profits arising in or derived from the Colony during the year preceding the year of assessment: Provided that for the year of assessment 1947/48 a person assessable to Profits Tax, by giving notice in writing to the Commissioner on or before the thirty-first day of March, 1949, may require that his assessment be adjusted to the profits arising during that year of assessment.

Basis for computing profits.

(2) Where the Commissioner is satisfied that the accounts of a trade, profession or business carried on or exercised in the Colony are usually made up to some day other than the thirty-first day of March, he may direct that the profits from that source be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment. Where, however, the profits of any trade, profession or business have been computed by reference to an account made up to a certain day, and no account is made up to the corresponding day in the year following, the profits from that source both of the year of assessment in which such failure occurs and of the two years of assessment following shall be computed on such basis as the Commissioner in his discretion thinks fit.

(3) Where a person commences to carry on a trade, profession or business in the Colony on a day within a year of assessment, the profits arising therefrom for the period from such date to the end of the year of assessment shall be the assessable profits for such year of assessment.

(4) Where a person has commenced to carry on a trade, profession or business on a day within the year preceding a year of assessment, the assessable profits for that year of assessment shall be the profits for one year from such day.

(5) Where a person ceases to carry on a trade, profession or business, the assessable profits therefrom as regards the year of assessment in which the cessation occurs shall be the amount of the profits of the period beginning on the first day of April in that year and ending on the date of cessation.

(6) Notwithstanding the provisions of section 71 a claim made under subsections (2), (3), (4) or (5) of this section to an adjustment of any assessment by reference to the profits for any period other than the year preceding the year of assessment shall be entertained if it is made within the period of twelve months next succeeding the year of assessment. A claim so made shall be regarded as an appeal for the purposes of Chapter XI.

(7) Where in the case of any trade, profession or business it is necessary in order to arrive at the profits or losses of any year of assessment or other period to divide and apportion to specific periods the profits and losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective period.

Treatment of losses.

20. Where a loss is incurred by any person in the basis period for any year of assessment in any trade, profession or business the amount of such loss attributable to activities in the Colony shall be carried forward and shall, subject as hereinafter provided, be set off against what would otherwise have been the chargeable profits of that person for the next five years in succession; provided that the amount of any such loss allowed to be set off in computing the chargeable profits in any year shall not be set off in computing the chargeable profits of any other year:

Provided that where all the members of a person not being a body corporate have elected to be severally assessed under the provisions of Chapter VII the portions of any loss incurred in the basis period for any year of assessment of any trade, profession or business falling on a member shall first be set off against the other income of that member. If the amount of the loss falling on a member cannot be wholly set off against his other income for the year of assessment following the year in which it was incurred the amount of the loss not so set off shall be set off against what would otherwise have been his chargeable income for the next five years in succession, provided that the amount of such loss allowed to be set off in computing the chargeable income for any year shall not be set off in computing the chargeable income of any other year.

Liability of certain non-resident persons.

21. (1) For the purposes of this section—

(a) a person is closely connected with another person where the Commissioner in his discretion considers that such

persons are substantially identical or that the ultimate controlling interest of each is owned or deemed under this section to be owned by the same person or persons;

(b) the controlling interest of a company shall be deemed to be owned by the beneficial owners of its shares, whether held directly or through nominees, and shares in one company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company.

(2) Where a non-resident person carries on business with a resident person with whom he is closely connected and the course of such business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to arise, the business done by the non-resident person in pursuance of his connection with the resident person shall be deemed to be carried on in the Colony, and such non-resident person shall be assessable and chargeable with tax in respect of his profits from such business in the name of the resident person as if the resident person were his agent, and all the provisions of this Ordinance shall apply accordingly.

22. Where the true amount of the profits of a non-resident person in respect of a trade, profession or business carried on in the Colony cannot be readily ascertained, such profits may be computed on a fair percentage of the turnover of that trade or business in the Colony.

Profits of certain businesses to be computed on a percentage of the turnover.

23. (1) Where a trade, profession or business is carried on by two or more persons jointly the tax in respect thereof shall be computed and stated jointly in one sum and a joint assessment shall be made in the partnership name.

Assessment of partnerships.

(2) The precedent partner shall make and deliver a statement of the profits or losses of such trade, profession or business, on behalf of the partnership, ascertained in accordance with the provisions of this Chapter relating to the ascertainment of profits.

Where no active partner is resident in the Colony the return shall be furnished by the manager or agent of the partnership in the Colony.

(3) If after the thirty-first day of March, 1946, a change occurs in a partnership of persons carrying on any trade, profession or business, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or business continue to be engaged therein, or a person who until that time was engaged in any trade, profession or business on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or business after that time shall, notwithstanding the change be computed according to the profits or gains of the trade, profession or business in accordance with section 19 as if no such change had occurred: Provided that on application made in writing by all the persons engaged in the trade, profession or business both immediately before and immediately after the change, and signed by all of them or, in the case of a deceased person, by his legal representative, and received by the Assessor within twelve months after the change took

place, or where the change took place during the year ending 31st March, 1947, within two years after the change took place, the Assessor shall compute the profits for any year of assessment as if the trade, profession or business had been discontinued at the date of the change and a new trade, profession or business had been then set up and commenced.

(4) Tax upon the partnership shall be recoverable by all means provided in this Ordinance out of the assets of the partnership, or from any partner, or from the Manager or Agent of the partnership in the Colony, and in the case of an assessment made in accordance with sub-section (3) notwithstanding a change in the partnership shall be recoverable if necessary from any person who quitted the partnership at the change or from the estate of any such person deceased.

(5) Tax may be assessed on the profits of a partnership notwithstanding the cessation or dissolution of such partnership and shall be recoverable from the former partners and from the assets of the partnership at the time of its cessation.

Ascertainment of profits of insurance companies.

24. (1) The profits of a company, whether mutual or proprietary, from the business of life insurance shall be the investment income of the Life Insurance Fund less the management expenses (including commission) attributable to that business :

Provided that where such a company transacts life insurance business both in the Colony, whether directly or through an agent, and elsewhere, the profits from business in the Colony shall be deemed to be the same proportion of the total investment income of the Life Insurance Fund of the company as the premiums from life insurance business in the Colony bear to the total life insurance premiums received by the company, subject to a deduction of agency expenses in the Colony (including commission) and a fair proportion of the expenses of the head office of the company, due account being taken in each case by set-off against such expenses of any income or profits other than life insurance premium or investment income.

(2) The profits of a company, whether mutual or proprietary, from the business of insurance (other than life insurance) shall be ascertained by taking the gross premiums from insurance business in the Colony (less any premiums returned to the insured and premiums paid on re-insurance) and deducting therefrom a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period of which the profits are being ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony, and a fair proportion of the expenses of the head office of the company, due account being taken in each case by set-off against such expenses of any income or profits other than premiums.

(3) Where the Commissioner is satisfied that by reason of the limited extent of the business transacted in the Colony by a non-resident insurance company it would be unreasonable to require the company to furnish the particulars necessary for the application of sub-sections (1) and (2), he may, notwithstanding the provisions of those sub-sections, permit

the profits of the company to be ascertained by reference to the proportion of the total profits and income of the company corresponding to the proportion which its premiums from insurance business in the Colony bear to its total premiums, or on any other basis which appears to him to be equitable.

(4) For the purposes of this section "investment income of the Life Insurance Fund" means, in the case of a company whose sole business is life insurance, the whole of its income from investments, and, in the case of any other company, such part of its income from investments as appears fairly attributable to its life insurance business.

25. (1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable in respect of the profits therefrom.

Clubs, trade associations, etc.

(2) Where a body of persons, whether corporate or unincorporate, carries on a trade association in such circumstances that more than half its receipts by way of entrance fees and subscriptions are from persons who claim or would be entitled to claim that such sums were allowable deductions for the purposes of section 17, such body of persons shall be deemed to carry on a business, and the whole of its income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from business, and the body of persons shall be chargeable in respect of the profits therefrom.

(3) In this section, "members", in relation to a body of persons, means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

26. There shall be deducted from any profits tax payable under this Chapter in respect of any trade, profession or business any Property Tax payable under Chapter II of this Ordinance, in respect of any land and/or buildings, by such trade, profession or business.

Deduction of Property Tax from Profit Tax.

27. For the purposes of assessment the dividends of a corporation, which is subject to tax under this Chapter, shall not be included in the profits of any other person for the purposes of taxation under this Chapter.

Certain dividends excluded from assessment of profits.

28. (1) Every corporation which is registered in the Colony shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the corporation (as reduced by any relief granted under sections 45 and 46) on the income out of which such dividend is paid, provided that where tax is not paid or payable by the corporation on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which

Deduction of tax from dividends of corporations.

tax is paid or payable by the corporation.

(2) Every such corporation shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the corporation has deducted or is entitled to deduct in respect of that dividend.

Provided that this section shall not apply to any dividend declared in respect of any period ending prior to the first day of April, 1947.

CHAPTER V.

Interest Tax.

Imposition of Interest Tax.

29. Interest Tax shall be charged at the standard rate on the full amount of any sum accruing after the thirty-first day of March, 1947, being interest arising in or accruing in the Colony on any debenture, mortgage, bill of sale, loan, deposit or advance, and

(a) paid or payable under any mortgage, debenture or bill of sale registered with any public authority or public officer; or

(b) paid or payable by any person carrying on trade, profession or business in the Colony and allowable as a deduction in ascertaining the profits of such trade, profession or business in accordance with section 17:

Provided that there shall be exempt from Interest Tax

(a) any interest paid or payable by or to a banker approved by the Commissioner;

(b) any interest paid or payable to a Corporation carrying on trade or business in the Colony.

Deduction of tax by person paying interest.

30. Where any person in the Colony pays or credits to any other person any sum accruing after the thirty-first day of March, 1947, being interest chargeable with tax under section 29, he shall, notwithstanding any agreement to the contrary whether made before or after the passing of this Ordinance deduct ten per centum from such sum, and every such deduction shall be a debt due from such person to the Government of Hong Kong and shall be recoverable forthwith as such or may be assessed and charged upon such person in addition to any tax otherwise payable by him under this Ordinance. Where any such person fails to make a deduction which he is required to make under this section he shall nevertheless be deemed to have made the deduction.

Certificate of deduction, etc., by person paying interest.

31. Any person who deducts Interest Tax in accordance with the provisions of section 30 shall, at the request of the recipient, issue to him a Certificate in the prescribed form showing—

- (i) the gross amount of the payment;
- (ii) the amount of tax deducted;
- (iii) the net amount paid or credited;
- (iv) the period of accrual.

Set off and refund of deduction.

32. (1) Where the profits of any person which are liable to tax under the provisions of sections 15 and 16 include any sum from which a deduction has been made in accordance with section 30, he shall be entitled, on production of a

Certificate issued in accordance with section 31, to a set off against the tax payable by him under the provisions of Chapter IV of the amount of the deduction shown on such Certificate: Provided that if the amount of the deduction should exceed the amount of Profits Tax, the excess shall be refunded in accordance with section 80.

(2) Where for any year of assessment a person is assessed to Profits Tax under the provisions of section 19 (5), the Commissioner may in addition to the relief due under paragraph (1) of this section grant such further relief as he may decide to be reasonable.

(3) The aggregate relief granted under this section in respect of any sum deducted by way of Interest Tax shall in no circumstances exceed the amount of such deduction.

33. Any person who has been deemed to have made a deduction from interest payable to another person under the provisions of section 30, may retain out of any assets of such other person coming into his possession or control, so much thereof as shall be sufficient to produce the amount of such deduction, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets; and where no assets of such other persons come into his possession or control out of which he could retain the amount deducted, the amount of such deduction shall be a debt due to him from such other person.

Recovery of deduction.

34. Where, in the opinion of the Commissioner, the provisions of section 30 relating to the deduction of Interest Tax have failed or are likely to fail to secure payment of any sum being tax upon interest charged by section 29, it shall be lawful for him to recover any such sum by way of direct assessment upon the recipient of such interest or upon his agent.

Recovery of tax by direct assessment.

CHAPTER VI.

Depreciation, etc.

35. (1) Where in or after the basis period for the year of assessment 1947/48 a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade there shall be made to the person who incurred the expenditure for the year of assessment in the basis period for which the expenditure was incurred an allowance to be known as an "initial allowance" equal to one-tenth thereof.

Initial and annual allowances, Industrial Buildings and Structures.

(2) (a) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is an industrial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure an allowance, to be known as an "annual allowance," equal to one-fiftieth of that expenditure shall be made to him for that year of assessment.

(b) Where at any time in or after the basis period for the year of assessment 1947/48 the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure the annual allowance, in the years of assessment the basis periods for which end after the time of

that sale, shall be computed by reference to the residual value of that expenditure immediately after the sale and shall be the fraction of the said residue the numerator of which is one and the denominator of which is the number of years of assessment comprised in the period which—

(i) begins with the first year of assessment for which the buyer is entitled to an annual allowance or would be so entitled if the building or structure had at all material times continued to be an industrial building or structure; and

(ii) ends with the fiftieth year of assessment after that in which the building or structure was first used; and so on for any subsequent sales.

(c) Notwithstanding anything in the preceding provisions of this section in no case shall the amount of an annual allowance made to a person for any year of assessment in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of his basis period for that year of assessment.

Balancing allowances and charges, Industrial Buildings and Structures.

36. (1) Where any capital expenditure has been incurred on the construction of a building or structure and, in or after the basis period for the year of assessment 1947/48, any of the following events occurs while the building or structure is an industrial building or structure, that is to say—

(a) the relevant interest in the building or structure is sold; or

(b) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or

(c) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,

an allowance or charge, to be known as a "balancing allowance" or a "balancing charge" shall, in the circumstances mentioned in this section, be made to or, as the case may be, on the person entitled to the relevant interest immediately before that event occurs for the year of assessment in his basis period for which that event occurs.

Provided that no balancing allowance or balancing charge shall be made to or on any person for any year of assessment by reason of any event occurring after the end of his basis period for the fiftieth year of assessment after that in which the building or structure was first used.

(2) Where there are no sale, insurance, salvage or compensation moneys, or where the residue of the expenditure immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of the said residue or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess or, where the residue is nil, to the said moneys.

(4) Notwithstanding anything in the last preceding subsection, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say—

(a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;

(b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question.

37. In this Chapter—

Definitions.

(1) An "industrial building or structure" means a building or structure in use—

(i) for the purposes of a trade carried on in a mill, factory or other similar premises; or

(ii) for the purposes of a transport, dock, water or electricity undertaking; or

(iii) for the purposes of a trade which consist in the manufacture of goods or materials or the subjection of goods or materials to any process; or

(iv) for the purpose of a trade which consists in the storage of goods or materials which are to be used in the manufacture of other goods or to be subjected, in the course of a trade, to any process; or

(v) for the purpose of a trade which consists of the storage of goods or materials on their arrival by sea or air into the Colony;

and, in particular, the said expression includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose.

Provided that notwithstanding anything in the foregoing the expression "industrial building or structure" does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, hotel or office or to any purpose ancillary to the purposes of a dwelling house, retail shop, showroom, hotel or office.

(2) The "relevant interest" means, in relation to any expenditure incurred on the construction of a building or structure the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it.

(3) The "residue of expenditure" shall be the amount of the capital expenditure incurred in the construction of a building or structure reduced by—

(i) the amount of any initial allowance made; and

(ii) any annual allowance made; and

(iii) any balancing allowances granted;

and increased by any balancing charges made.

For the purpose of computing the residue of expenditure there shall be written off an amount of one-fiftieth of the expenditure in respect of any year of assessment in which no initial or annual allowance falls to be made.

Initial and annual allowances, Machinery or Plant.

38. (1) Where, in or after the basis period for the year of assessment 1947/48 a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, profession or business, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred an allowance, to be known as an "initial allowance" equal to one-fifth of that expenditure.

(2) Where at the end of the basis period for any year of assessment a person has in use machinery or plant for the purpose of his trade, profession or business there shall be made to him in respect of that year of assessment an allowance to be known as an "annual allowance" for depreciation by wear and tear of those assets. The allowance shall be calculated at the rates prescribed by the Board of Inland Revenue and shall be computed on the reducing value of the asset, which shall be the original cost of the asset reduced by—

- (i) any initial allowance granted in accordance with the provisions of this section; and
- (ii) by the annual allowances made under the provisions of this section.

Provided that—

(i) where the asset was acquired before the basis period in respect of the year of assessment 1947/48 the value at the end of the basis period shall be computed by deducting from the amount paid for the asset by its present owner annual allowances as if this subsection had been in force during the whole period of ownership of the asset excluding any period during which the owner was deprived of the use of the asset by reason of enemy occupation.

(ii) the Commissioner may in his discretion allow a higher rate than that prescribed by the Board of Inland Revenue.

Balancing allowances and charges, Machinery or Plant.

39. (1) Where, in or after the basis period for the year of assessment 1947/48, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or an annual allowance has been made for any year of assessment to a person carrying on a trade, profession or business, that is to say, either—

- (a) the machinery or plant is sold, whether while still in use or not; or
- (b) the machinery or plant is destroyed; or
- (c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the trade, profession or business is permanently discontinued, an allowance or charge, to be known as a "balancing allowance" or a "balancing charge," shall in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the year of assessment in his basis period for which that event occurs.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event

exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid or, as the case may be, the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys.

(4) Notwithstanding anything in the last preceding subsection, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say—

- (a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;
- (b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question, including any allowance computed under section 38 (2) (ii) at a rate higher than that prescribed by the Board of Inland Revenue.

40. Where machinery or plant in the case of which any of the events mentioned in subsection (1) of section 39 has occurred is replaced by the owner thereof and a balancing charge falls to be made on him by reason of that event or, but for the provisions of this section, would have fallen to be made on him by reason thereof, then, if by notice in writing to the Commissioner he so elects, the following provisions shall effect, that is to say—

Replacement of Machinery or Plant.

(a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant—

- (i) the charge shall be made only on an amount equal to the difference; and
- (ii) no initial allowance, no balancing allowance and no annual allowance shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and

(iii) in considering whether any, and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;

(b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made—

- (i) the charge shall not be made; and
- (ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and

(iii) in considering what annual allowance is to be made in respect of the new machinery or plant, there shall be left out of account a proportion of the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and

(iv) in considering whether any and, if so, what balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

Expenditure on machinery or plant.

41. Expenditure on the provision of machinery or plant shall include capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the trade, profession or business.

CHAPTER VII.

Personal Assessment.

Election to be personally assessed.

42. (1) Any individual being a resident of the Colony may, by notice in writing to the Commissioner, elect to be personally assessed on his total income. Such election shall be made not later than the last day of the year following the year of assessment to which it relates.

(2) For the purpose of this Section—

“resident of the Colony” means an individual who stays in the Colony for a period or a number of periods amounting to more than one hundred and eighty days during the year of assessment in respect of which the election is made or for a period or periods amounting to more than three hundred days in two consecutive years of assessment, one of which is the year of assessment in respect of which the election is made.

Allowances.

43. (1) In giving effect to an election under the provisions of this Chapter the Assessor shall make a single assessment in the sum of the total income, reduced by the following allowances—

(a) An allowance of seven thousand dollars.

(b) An allowance of five thousand dollars if at any time during the year preceding the year of assessment the individual had a wife.

(c) An allowance of two thousand dollars if the individual had living at any time during the year preceding the year of assessment an unmarried child who was under the age of 21 years, and where he had more than one such child, an allowance of two thousand dollars for the second child and one thousand dollars each for the third and fourth child and two hundred dollars for each subsequent child:

Provided that—

(i) no such allowance shall be made in respect of a child whose income from any source for the year preceding the year of assessment exceeded two thousand dollars;

(ii) no such allowance shall be made in respect of a child who carried on or exercised during the year preceding the year of assessment a trade, profession, business, vocation or employment, other than employment proved to the satisfaction of the Commissioner to be apprenticeship;

(iii) the total allowances in respect of children shall not exceed in all seven thousand dollars.

(d) The annual amount of any premium paid in respect of any individual on the life of the individual or on the life of his wife in any Insurance Company or the annual contribution made by the individual to the Widows' and Orphans' Pensions Scheme of the Colony or such other scheme or fund as the Commissioner may approve as equivalent to a Widows' and Orphans' Pensions Scheme:

Provided that no such deduction shall be allowed in respect of any such annual amount of premium or contribution beyond an amount equal to one-sixth part of the total income of such individual before making the deductions specified in (b), (c), (d) and (e) of this subsection.

(e) Sums payable by way of interest on any money borrowed for the purpose of producing the income or any part thereof.

(2) For the purpose of this chapter—

(a) “total income” means the total income of an individual computed in accordance with the provisions of Chapters II, III, IV and V, as the case may be, and shall include the amount of any dividend from a corporation which is entitled to deduct tax under the provisions of section 28. The amount to be included in respect of such dividend is the net dividend received plus the tax which the corporation has deducted or is entitled to deduct in respect of that dividend.

(b) “wife” means the lawful wife of any individual married to him by a Christian marriage or its civil equivalent, or in the case of a Chinese or any other Asiatic the principal spouse.

(c) “child” of an individual includes a child by his wife or by a former wife and a step-child. It includes also an adopted child and, in the case of Asiatics, a child by his concubine if such child is recognized by him and his family as a member of his family.

(3) An individual who is liable to tax for a part only of a year of assessment shall be entitled for that year to the same proportion only of the allowances under this section as the number of days during which he is liable bears to the number of days in that year of assessment.

(4) Every individual who claims an allowance under this section shall make his claim on the prescribed form. Such allowance shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

44. (1) Tax shall be charged on the total income reduced by the allowances under section 43 at the following rates—

Rates of charge.

(a) Upon the first five thousand dollars at one-quarter of the standard rate.

(b) Upon the next five thousand dollars at one-half of the standard rate.

(c) Upon the next five thousand dollars at three-quarters of the standard rate.

(d) Upon the next five thousand dollars at the standard rate.

(e) Upon the next five thousand dollars at the standard rate plus one-quarter thereof.

(f) Upon the next five thousand dollars at the standard rate plus one-half thereof.

(g) Upon the next five thousand dollars at the standard rate plus three-quarters thereof.

(h) Upon the remainder at twice the standard rate.

Provided that where an individual is liable to tax under this Chapter for a part only of any year of assessment, the sums under (a), (b), (c), (d), (e), (f) and (g) of this section shall be reduced in the proportion which the number of days during which he is so liable bears to the number of days in that year of assessment.

(2) Any tax which shall have been paid whether directly or by deduction under the provisions of section 7 or 30 and any tax which a corporation has deducted or is entitled to deduct under the provisions of section 28 and any Business Profits tax which shall have been paid or charged upon any part of the income under the provisions of Chapter IV shall, when the relevant income is included in the total income of any individual, be set off for the purposes of collection against the tax charged on that individual. Any excess of tax so borne by deduction over the tax payable by an individual shall be repayable by the Commissioner on receipt of a claim in the form prescribed and on the Commissioner being satisfied that the claim is in order.

CHAPTER VIII.

Double Taxation and non-Residents.

Relief in respect of United Kingdom Income Tax.

45. (1) Any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom tax.

(2) For the purposes of this section a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(3) For the purpose of this section the expression "rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section twenty-two of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

Relief in respect of Empire Income Tax.

46. (1) If any person resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his

income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in the Colony paid or payable by him on that part of his income at a rate thereon to be determined as follows—

(a) if the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in the Colony the rate at which relief is to be given shall be the Empire rate of tax;

(b) in any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in the Colony who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows—

(a) if the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax;

(b) if the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire tax.

(3) For the purposes of this section, Empire income tax means any income tax charged under any law in force in any part of the British Empire (other than the United Kingdom or this Colony), provided that the legislature of that part or place has provided for relief in respect of tax charged on income both in that part or place and this Colony in a manner similar to that provided in this section.

(4) For the purposes of this section the rate of tax under this Ordinance shall be computed in the manner provided by sub-section (3) of the last preceding section of this Ordinance and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in the Colony and in a part or place in which Empire income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

47. Where, under any law in force in any part of the British Empire provision is made for the allowance of relief from income tax in respect of the payment of tax under this Ordinance, the obligation as to secrecy imposed by section 4 of this Ordinance shall not prevent the disclosure to the authorised officers of the Government in that part of the British Empire of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from tax under this Ordinance or from income tax in that part or place aforesaid.

Official secrecy.

Persons assessable on behalf of a non-resident.

48. (1) A non-resident person shall be assessable either directly or in the name of his agent in respect of all his profits arising in or derived from the Colony of any trade, profession or business carried on in the Colony whether such agent has the receipt of the profits or not, and the tax so assessed whether directly or in the name of the agent shall be recoverable by all means provided in this Ordinance out of the assets of the non-resident person or from the agent. Where there are more agents than one they may be assessed jointly or severally in respect of the profits of the non-resident person and shall be jointly and severally liable for tax thereon.

(2) Every person chargeable with tax as agent, or from whom tax is recoverable in respect of the profits of another person, may retain out of any assets coming into his possession or control on behalf of such other person or in his capacity as agent so much thereof as shall be sufficient to produce the amount of such tax, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets.

Profits of shipowners, aircraft-owners and charterers.

49. (1) Where a person carries on a business of ship-owner or aircraft owner or charterer and any ship or aircraft owned or chartered by such person calls at a port in the Colony the full amount of the profits arising from the carriage of passengers, mails, livestock and goods shipped in the Colony shall be deemed to arise in the Colony: Provided that this section shall not apply to goods which are brought to the Colony solely for transhipment.

(2) The following provisions shall apply to the determination of such profits—

(a) the profits arising in Hong Kong from shipping or air transport business for any accounting period shall be the sum bearing the same ratio to the sums receivable in respect of carriage of passengers, mails, livestock and goods shipped in the Colony as the total profits for the said period shown by that person's accounts bear to the total sums receivable by him in respect of the carriage of passengers, mails, livestock and goods: Provided that where the said total profits have been computed on a basis which differs materially from that prescribed in Chapter IV for the ascertainment of profits, the ratio of profits shall be adjusted so as to correspond as nearly as may be to the ratio which would have been arrived at if the profits had been computed in accordance with the provisions of Chapter IV relating to the ascertainment of profits;

(b) where the provisions of paragraph (2) (a) of this section cannot for any reason be satisfactorily applied, the profits arising in the Colony may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, livestock and goods shipped in the Colony: Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within one year of the end of such year of assessment that his liability to tax for that year be recomputed on the basis provided by paragraph (2) (a) of this section;

(c) where the Commissioner decides that the call of a ship or aircraft belonging to a particular shipowner or charterer at a port of the Colony is casual and that further calls by that ship or aircraft or others in the same ownership

are improbable, he may in his discretion exempt the profits of such ship or aircraft from the provisions of this section, and thereupon such profits shall be treated as if they do not arise in the Colony.

(3) The master of any ship or aircraft owned or chartered by a person whose profits are calculated under the provisions of this section shall (though not to the exclusion of any other agent) be deemed the agent of such person for all the purposes of the Ordinance.

50. (1) If the Governor in Council by Order declares that arrangements specified in the Order have been made with the Government of any territory outside the Colony with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under this Ordinance notwithstanding anything in any enactment.

Double taxation arrangements.

(2) On the making of an Order under this section with respect to arrangements relating to the United Kingdom, Section 45 shall cease to have effect except in so far as the arrangements otherwise provide.

(3) On the making of an Order under this section with respect to arrangements relating to any territory forming part of His Majesty's dominions (other than the United Kingdom or this Colony), Section 46 shall cease to have effect as respects that territory except in so far as the arrangements otherwise provide.

(4) Any Order made under this section may be revoked by a subsequent Order.

(5) Where any arrangements have effect by virtue of this Section, the obligation as to secrecy imposed by section 4 of this Ordinance shall not prevent the disclosure to any authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(6) The Governor in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

51. (1) The provisions of this Section shall have effect where, under arrangements having effect under Section 50, tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in the Colony; and in this Section the expression "foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed and the expression "tax" means tax chargeable under this Ordinance.

Tax credits.

(2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is resident in the Colony for that year.

(3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Ordinance and then charging it to tax at a rate ascertained by dividing the tax chargeable (before allowance of credit under any arrangements having effect under Section 50) on the total income of the person entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of the preceding subsection, the total credit to be allowed to a person for any year of assessment for foreign tax under all arrangements having effect under Section 50 shall not exceed the total tax payable by him for that year of assessment, less any tax payable by him under the provisions of Section 30.

(5) In computing the amount of the income—

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the tax chargeable depends on the amount received in the Colony, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;

(c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit;

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(6) Paragraphs (a) and (b) of the preceding subsection (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3) of this Section, and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under Section 50.

(7) Where—

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he elects that credits shall not be allowed in the case of his income for that year.

(9) Any claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(10) Where the amount of a credit given under the arrangement is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the Colony or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in the Colony or elsewhere, as are material in determining whether any and if so what credit falls to be given.

CHAPTER IX.

Returns, etc.

52. (1) An Assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish a return of any sum assessable to Property Tax, Salaries and Annuities Tax, Profits Tax or Interest Tax under Chapters II, III, IV and V of this Ordinance, containing such particulars and in such form as may be prescribed.

Returns and
information
to be
furnished.

An Assessor shall give notice to any individual who has elected to be personally assessed under Chapter VII requiring him within a reasonable time stated in such notice to furnish a return of his total income assessable under this Ordinance, containing such particulars and in such form as may be prescribed.

(2) Every person chargeable with tax for any year of assessment who has not been required within a period of three months after the commencement of such year of assessment to make a return of any income assessable to such tax for that year as provided in sub-section (1) shall within fourteen days after the expiration of such period give notice to the commissioner that he is so chargeable.

(3) An Assessor may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.

(4) For the purpose of obtaining full information in respect of any person's income which is assessable to tax under this Ordinance—

(a) an Assessor may give notice in writing to such person requiring him within a reasonable time stated in such notice to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents which the Assessor may deem necessary;

(b) an Assistant Commissioner may give notice in writing to such person or to any other person whom he may deem able to furnish information in respect of such income, requiring him to attend at a time and place to be named by the Assistant Commissioner for the purpose of being examined respecting such income or any transactions or matters affecting the same.

(5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.

(6) Any person discontinuing a business, profession or employment or the ownership of property shall give to the Commissioner notice of such discontinuance within one month thereof.

Information to be furnished by officials and employers.

53. (1) The Commissioner may give notice in writing to any officer in the employment of the Government or of any public body requiring him within a reasonable time stated in such notice to furnish any particulars which he may require for the purposes of this Ordinance which may be in the possession of such officer :

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any express statutory obligation to observe secrecy.

(2) Every person who is an employer shall, when required to do so by notice in writing given by an Assessor, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice, of—

(a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the Assessor and

(b) any other person employed by him named by the Assessor.

(3) Any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed by the company.

Who may act for incapacitated or non-resident persons.

54. An act or thing required by or under this Ordinance to be done by any person shall, if such person is an incapacitated or non-resident person, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such non-resident person, as the case may be.

Liability of executor of deceased taxpayer.

55. The executor of a deceased person shall be chargeable with the tax for all periods prior to the date of such person's death with which the said person would be chargeable if he were alive, and shall be liable to do all such acts, matters or things as the deceased person if he were alive would be liable to do under this Ordinance :

Provided that—

(i) no proceedings shall be instituted against the executor under the provisions of Chapter XIV of this Ordinance in respect of any act or default of the deceased person ;

(ii) no assessment or additional assessment in respect of a period prior to the date of such person's death shall be made after the expiry of two years from such date of death ; and

(iii) the liability of an executor under this section shall be limited to the sum of—

(a) the deceased person's estate in his possession or control at the date when notice is given to him that liability to tax will arise under this section, and

(b) any part of the estate which may have passed to a beneficiary within twelve months after the death of the deceased person.

56. Where two or more persons act in the capacity of trustees of a trust or executors of a deceased person's estate, they may be charged jointly or severally with the tax with which they are chargeable in that capacity, and shall be jointly and severally liable for payment of the same.

Joint and several liability of trustees and executors.

57. (1) Wherever two or more persons in partnership act in the capacity of trustees or executors, or as agents, or are employers, or are persons in receipt of profits or act in any other capacity whatever, either on behalf of themselves or of any other person, the precedent partner of such partnership shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity :

Precedent partner to act on behalf of partnership.

Provided that any person to whom a notice has been given under the provisions of this Ordinance as precedent partner of a partnership shall be deemed to be the precedent partner thereof unless he proves that he is not a partner in such partnership, or that some other person resident in the Colony is the precedent partner thereof.

(2) Where two or more persons who are not in partnership act jointly in any capacity mentioned in sub-section (1), they shall be jointly and severally answerable for doing all such acts, matters, and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity.

58. The secretary, manager, or other principal officer of every company or body of persons corporate or unincorporate shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such company or body or persons :

Principal officer to act on behalf of a company or body of persons.

Provided that any person to whom a notice has been given under the provisions of this Ordinance on behalf of a company or body of persons shall be deemed to be the principal officer thereof unless he proves that he has no connection with the company or body of persons, or that some other person resident in the Colony is the principal officer thereof.

Signature and service of notices.

59. (1) Every notice to be given by the Commissioner, an Assistant Commissioner, or an Assessor under this Ordinance shall bear the name of the Commissioner or Assistant Commissioner or Assessor, as the case may be, and every such notice shall be valid if the name of the Commissioner, Assistant Commissioner or Assessor is duly printed or signed thereon.

(2) Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known place of abode or any place at which he is, or was during the year to which the notice relates, carrying on business :

Provided that a notice of assessment under section 64 shall be served personally or by being sent by registered post to any such place as aforesaid.

(3) Any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post.

(4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Ordinance which purports to be the name of the person authorised to give or issue the same shall be judicially noticed.

CHAPTER X.

Assessments.

Assessor to make assessments.

60. (1) Every person who is in the opinion of an Assessor chargeable with tax under this Ordinance shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return under section 52(1) :

Provided that the Assessor may assess any person at any time if he is of opinion that such person is about to leave the Colony; or that for any other reason it is expedient to do so.

(2) Where a person has furnished a return of income liable to assessment the Assessor may either—

(a) accept the return and make an assessment accordingly; or

(b) if he does not accept the return, estimate the amount of the assessable income of such person and assess him accordingly :

Provided that if the Assessor accepts the return as substantially correct, but considers it necessary to make further inquiries on any matter, he may make immediately a provisional assessment in the amount of the return which until amended shall be a valid assessment for all purposes.

(3) Where a person has not furnished a return and the Assessor is of the opinion that such person is chargeable with tax, he may estimate the amount of the assessable income of

such person and assess him accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return.

(4) In the case of profits from a trade or business, if accounts of such trade or business have not been kept in a satisfactory form, the Assessor may assess the profits or income of such trade or business on the basis of the usual rate of net profit on the turnover of such trade or business; and the Board of Inland Revenue may prescribe the amounts of such usual rates of profits in particular classes of trade or business.

61. Where it appears to an Assessor that a provisional assessment made under sub-section (2) of section 60 should be increased or that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the Assessor may, within the year of assessment or within three years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder :

Additional assessments.

Provided that, where the non-assessment or under assessment of any person for any year of assessment is due to fraud or wilful evasion, such assessment or additional assessment may be made at any time within six years after the expiration of that year of assessment.

62. Where an Assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly.

Certain transactions and dispositions to be disregarded.

63. (1) An Assistant Commissioner shall give a notice of assessment to each person who has been assessed stating the amount assessed and the amount of tax charged.

Notice to be issued by Assistant Commissioner.

(2) Where the assessment is a provisional assessment made under section 60(2) the person assessed shall be notified accordingly; and he shall further be notified in due course if such provisional assessment is confirmed, provided that the confirmation of a provisional Assessment shall not preclude the making of an additional assessment subsequently under section 61.

(3) Where by reason of an amendment of the law it is necessary to vary the amount of tax charged in any notice of assessment the Assistant Commissioner may give such notification as may be necessary to the person assessed in that notice of assessment; and any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been included in the notice of assessment, have effect as if the notification were a notice of assessment.

Validity of assessments, etc.

64. No notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

CHAPTER XI.

Appeals.

Procedure on appeals to the Commissioner.

65. (1) Any person aggrieved by an assessment made under this Ordinance may within one month from the date of the notice of such assessment appeal to the Commissioner by notice of objection in writing to review and revise such assessment. Any person so appealing (hereinafter referred to as the appellant) shall state in his notice the grounds of his objection and the notice shall not be valid unless it contains such grounds and is made within the period above mentioned:

Provided that the Commissioner, upon being satisfied that owing to absence from the Colony, sickness, or other reasonable cause the appellant was prevented from giving notice of objection within such period, shall grant an extension thereof:

Provided further that, where any assessment appealed against has been made in the absence of a return of income by the appellant, no notice of objection shall be valid unless and until such return has been duly made.

(2) On receipt of a valid notice of objection under sub-section (1), the Commissioner may cause further inquiry to be made by an Assessor, and if in the course of such inquiry an agreement is reached as to the amount at which the appellant is liable to be assessed, any necessary adjustment of the assessment shall be made.

(3) Where no agreement is reached between the appellant and the Assessor in the manner provided in sub-section (2), the Commissioner shall, subject to the provisions of section 68 fix a time and place for the hearing of the appeal.

(4) Every appellant shall attend before the Commissioner at the time and place fixed for the hearing of the appeal. The appellant may attend the hearing of the appeal in person or by an authorised representative. The Commissioner may, if he thinks fit, from time to time adjourn the hearing of an appeal for such time and place as he may fix for the purpose. In any case in which an authorized representative attends on behalf of the appellant, the Commissioner may adjourn the hearing of the appeal and may, if he considers that the personal attendance of the appellant is necessary for the determination of the appeal, require that the appellant shall attend in person at the time and place fixed for the adjourned hearing of the appeal. If the appellant or his authorized representative fails to attend at the time and place fixed for the hearing or any adjourned hearing of the appeal, or if the appellant fails to attend in person when required so to attend by the Commissioner, the Commissioner may dismiss the appeal:

Provided that if the appellant shall within a reasonable time after the dismissal of an appeal satisfy the Commissioner that he or his representative was prevented from due attendance at the hearing or at any adjourned hearing of such appeal by absence from the Colony, sickness, or other unavoidable cause, the Commissioner may vacate the order of dismissal and fix a time and place for hearing of the appeal.

(5) The Commissioner shall have power to summon any person whom he may consider able to give evidence respecting the appeal to attend before him at the hearing and may examine such person on oath or otherwise. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in so attending.

(6) In disposing of an appeal the Commissioner may confirm, reduce, increase, or annul the assessment, and shall record his determination in writing and announce it orally.

(7) Where the Commissioner authorizes an Assistant Commissioner to hear appeals, such authority shall not empower such Assistant Commissioner to hear an appeal against an assessment which he has himself signed and allowed or against a penalty which he has himself imposed.

66. (1) For the purpose of hearing appeals in the manner hereinafter provided, there shall be a panel for a Board of Review consisting of not more than twenty members who shall be appointed from time to time by the Governor. The members of the panel shall hold office for a term of three years but shall be eligible for reappointment.

Constitution of the Board of Review.

(2) There shall be a Clerk to the Board of Review (hereinafter referred to as the Board) who shall be appointed by the Governor.

(3) There shall be a legal Adviser to the Board who shall be appointed by the Board.

(4) Three or more members of the panel, one of whom shall be nominated as chairman, shall be nominated by the Colonial Secretary and summoned by the Clerk to attend meetings of the Board at which appeals are to be heard. At any such a meeting a quorum shall consist of three members. All matters coming before the Board shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote.

(5) At the request of the Colonial Secretary, the Clerk to the Board shall summon a meeting of the Board consisting of all the members of the panel available in the Colony. At such a meeting a quorum shall consist of five members.

(6) The remuneration (if any) of the members of the Board, the Clerk, and the Legal Adviser shall be fixed by the Governor.

67. (1) Any appellant, or the authorized representative of any appellant, who is dissatisfied with the determination by the Commissioner of an appeal under section 65 may declare his dissatisfaction with that determination. Such declaration shall be made orally immediately after the

Right of appeal to the Board of Review.

announcement by the Commissioner of his determination or shall be communicated in writing to the Commissioner within one week from the date of such announcement.

(2) Where the appellant has declared or communicated his dissatisfaction in accordance with sub-section (1), the Commissioner shall, within one month of the determination of the appeal, transmit in writing to the appellant or his authorised representative his determination and reasons therefor.

(3) Within one month of the transmission of such written determination and reasons by the Commissioner, the appellant may give notice of appeal to the Board. Such notice shall not be entertained unless it is given in writing to the Clerk to the Board and is accompanied by a copy of the Commissioner's written determination, together with a statement of the grounds of appeal therefrom.

(4) Save with the consent of the Board and on such terms as the Board may determine the appellant may not at the hearing by the Board rely on any grounds of appeal other than the grounds stated in accordance with sub-section (3), and may not adduce any evidence other than evidence adduced at the hearing of the appeal before the Commissioner.

Commissioner may refer appeals to the Board of Review.

68. Notwithstanding the provisions of section 65 where the Commissioner is of opinion that no useful purpose would be served by his hearing an appeal, he may refer it to the Board of Review, and the Board shall hear and determine such appeal and the provisions of section 69 shall apply accordingly.

Hearing and disposal of appeals to the Board of Review.

69. (1) As soon as may be after the receipt of a notice of appeal, the Clerk to the Board shall fix a time and place for the hearing of the appeal, and shall give fourteen clear days' notice thereof both to the appellant and to the Commissioner.

(2) Every appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative :

Provided always that the Board may postpone the hearing of the appeal for such time as it thinks necessary for the attendance of the appellant.

(3) The Assessor who made the assessment appealed against or some other person authorized by the Commissioner shall attend such meeting of the Board in support of the assessment.

(4) The onus of proving that the assessment as determined by the Commissioner on appeal, or as referred by him under section 68, as the case may be, is excessive shall be on the appellant.

(5) All appeals shall be heard in camera.

(6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending

may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.

(7) At the hearing of the appeal the Board may, subject to the provisions of section 67(4), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance, 1889, relating to the admissibility of evidence shall not apply.

Ordinance No. 2 of 1889.

(8) After hearing the appeal, the Board shall confirm, reduce, increase, or annul the assessment as determined by the Commissioner on appeal, or as referred by him under section 68, as the case may be, or may remit the case to the Commissioner with the opinion of the Board thereon. Where a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require.

(9) Where under sub-section (8), the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding one hundred dollars, which shall be added to the tax charged and recovered therewith.

70. (1) The decision of the Board shall be final :

Appeals to the Supreme Court.

Provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained unless it is made in writing and delivered to the Clerk to the Board, together with a fee of fifty dollars, within one month of the date of the Board's decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him :

And provided also that the appellant or the Commissioner may appeal to the Supreme Court on a question of fact with the leave of such Court.

(2) The stated case shall set forth the facts and the decision of Board, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the same.

(3) At or before the time when he transmits the stated case to the Supreme Court, the party requiring it shall send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.

(4) Any Judge of the Supreme Court may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.

(5) Any Judge of the Supreme Court shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the court upon such question confirm, reduce, increase or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the court thereon. Where a case is so

remitted by the court, the Board shall revise the assessment as the opinion of the court may require.

(6) In any proceedings before the Supreme Court under this section, the court may make such order in regard to costs in the Supreme Court and in regard to the sum paid under sub-section (1) as to the court may seem fit.

(7) Appeals from decisions of the Supreme Court under this section shall be governed by the provisions of the Supreme Court Ordinance, 1873, the Code of Civil Procedure, the Full Court Ordinance, 1933, and the Orders and Rules governing appeals to the Privy Council.

Ordinances Nos. 3 of 1873, 3 of 1901 and 8 of 1933.

Assessments or amended assessments to be final.

71. Where no valid objection or appeal has been lodged within the time limited by this Chapter against an assessment as regards the amount of the assessable income assessed thereby, or where the amount of the assessable income has been agreed to under section 65(2), or where the amount of such assessable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income :

Provided that nothing in this Chapter shall prevent an Assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on appeal for the year.

CHAPTER XII.

Payment and Recovery of Tax.

Provisions regarding payment of tax.

72. (1) The tax charged by any assessment shall be paid in the manner directed in the notice of assessment on or before a date specified in such notice. Any tax not so paid shall be deemed to be in default, and the person by whom such tax is payable or, where any tax is payable by more than one person or by a partnership, then each of such persons and each partner in the partnership, shall be deemed to be a defaulter, for the purposes of this Ordinance.

(2) Tax shall be paid notwithstanding any notice of objection or appeal, unless the Commissioner orders that payment of tax or any part thereof be held over pending the result of such objection or appeal.

(3) Where the Commissioner is of opinion either that the tax or any part thereof held over under sub-section (2) is likely to become irrecoverable, or that the appellant is unreasonably delaying the prosecution of his appeal, he may cancel any order made under that sub-section and make such fresh order as the case may appear to him to require.

(4) Where, upon the final determination of an appeal under Chapter XI, or upon any order made by the Commissioner any tax which has been held over under sub-section (2) becomes payable or the tax charged by the original assessment is increased, the Commissioner shall give to the appellant a notice in writing fixing a date on or before which any tax or balance of tax shall be paid. Any tax not so paid shall be deemed to be in default.

(5) Where any tax is in default, the Commissioner may in his discretion order that a sum or sums not exceeding five per centum in all of the amount in default shall be added to the tax and recovered therewith.

(6) Notwithstanding anything contained in the previous sub-sections of this section the Commissioner may agree to accept payment of Salaries Tax by instalments.

73. In the succeeding sections of this Chapter, "tax" includes any sum or sums added under section 72 (5) by reason of default, together with any fines, penalties, fees, or costs incurred.

Tax to include fines, etc.

74. (1) Save as provided in sub-section (2), tax in default shall be a first charge upon all the assets of the defaulter :

Tax to be a first charge.

Provided that—

(i) such charge shall not extend to or affect any assets sold by the defaulter to a bona fide purchaser for value prior to the seizure of the same in accordance with the provisions of section 75;

(ii) as regards immovable property, the tax shall not rank in priority to any lease or encumbrance created bona fide for value and registered prior to the date of such seizure; and

(iii) as regards movable property, where tax for more than one year of assessment is in default, the tax for one year only, to be selected by the Commissioner, shall rank in priority to any lien or encumbrance created bona fide for value prior to the date of default.

(2) A receiver shall pay out of the assets under his control the tax charged or chargeable for one complete year of assessment prior to the date of the insolvency, bankruptcy, or liquidation, to be selected by the Commissioner, as a first charge on such assets and any other tax charged or chargeable for periods prior to such date shall be an unsecured debt :

Provided that where the receiver proves to the satisfaction of the Commissioner that any tax to which this sub-section applies is excessive, the Commissioner may, notwithstanding the provisions of section 71, review the assessment in respect of which the tax is charged and make such adjustment as he may in his discretion think reasonable.

75. (1) The Commissioner may appoint persons to be Collectors.

Recovery of tax by seizure and sale.

(2)—(a) Where any tax is in default, the Commissioner may issue a certificate to any Collector or bailiff containing particulars of such tax and the name of the defaulter, and the officer to whom such certificate is issued shall be empowered and is hereby required to cause the tax to be recovered from the defaulter named in the certificate by seizure and sale of his movable property.

(b) The said seizure shall be effected in such manner as may be prescribed and any property so seized shall be kept for five days at the costs and charges of the defaulter. If the defaulter does not pay the tax in default together with the costs and charges within the said five days, the Collector or bailiff shall cause the said property to be sold by public auction.

(c) The sum realized by the sale shall be applied—

(i) firstly, in payment of the costs and charges of seizing, keeping, and selling the property, and

(ii) secondly, in satisfaction of the tax in default, and any balance shall be restored to the owner of the property seized.

(3) Whenever the Commissioner issues a certificate under this section, he shall at the same time issue to the defaulter a notification thereof by personal service, registered post, or telegraph; but the non-receipt of such notification by the defaulter shall not invalidate proceedings under this section.

76. (1) Where the Commissioner is of opinion in any case that recovery of tax in default by seizure and sale is impracticable or inexpedient, or where the full amount of the tax has not been recovered by seizure and sale, he may issue a certificate containing particulars of such tax and the name and last known place of business or residence of the defaulter to a Magistrate. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the tax should not be taken against him, and in default of sufficient cause being shown, the tax in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment, and the provisions of the Magistrates Ordinance, 1932, relating to default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that Ordinance, he could have made at the time of imposing such sentence :

Provided that nothing in this section shall authorize or require the Magistrate in any proceeding thereunder to consider, examine, or decide the correctness of any statement in the certificate of the Commissioner.

(2) In any proceeding under sub-section (1) the Commissioner's certificate shall be sufficient evidence that the tax has been duly assessed and is in default, and any plea that the tax is excessive, incorrect, or under appeal shall not be entertained, except that where any person proceeded against has not appealed within the proper time against all the assessment in respect of which the tax is charged and alleges that the tax is in excess of the sum which would have been charged if he had so appealed, the court may adjourn the matter for not more than thirty days to enable such person to submit to the Commissioner his objection to the tax.

(3) The Commissioner, shall notwithstanding the provisions of section 71, consider such objection and give his decision thereon, which shall be final, and shall be certified by

Recovery of tax on certificate to a Magistrate.

Ordinance No. 41 of 1932.

him to the Magistrate, and proceedings under this section shall thereupon be resumed to enforce payment of the tax as reduced or confirmed under such decision.

77. (1) Where tax payable by any person is in default and it appears to the Commissioner to be probable that any person—

Recovery from debtor of taxpayer.

(a) owes or is about to pay money to the defaulter; or

(b) holds money for or on account of the defaulter; or

(c) holds money on account of some other person for payment to the defaulter; or

(d) has authority from some other person to pay money to the defaulter,

the Commissioner may give to such person notice in writing (a copy of which shall be sent by post to the defaulter) requiring him to pay any such moneys not exceeding the amount of the tax in default to the officer named in such notice. The notice shall apply to all such moneys which are in his hands or due from him or about to be paid by him at the date of receipt of such notice, or come into his hands or become due from him or about to be paid by him at any time within a period of thirty days thereafter.

(2) Any person who has made any payment in pursuance of this section shall be deemed to have acted under the authority of the person by whom the tax was payable and of all other persons concerned, and is hereby indemnified in respect of such payment against all proceedings, civil or criminal, notwithstanding the provisions of any written law, contract or agreement.

(3) Any person to whom a notice has been given under sub-section (1) who is unable to comply therewith owing to the fact that the moneys in question do not come into his hands or become due from him within the period referred to in sub-section (1) shall within fourteen days of the expiration thereof give notice in writing to the Commissioner acquainting him with the facts.

(4) Where any person to whom a notice has been given under sub-section (1) is unable to comply therewith and has failed to give notice to the Commissioner as provided in sub-section (3), or where he has deducted or could have deducted the tax to which the notice relates or any part thereof and has not paid over as directed by the Commissioner the amount of such tax or part thereof within fourteen days after the expiration of the period referred to in sub-section (1), he shall be personally liable for the whole of the tax which he has been required to deduct, which may be recovered from him by all means provided in this Ordinance for the recovery of tax from a person who has made default in payment.

78. (1) Where the Commissioner is of opinion that any person is about to or likely to leave the Colony without paying all tax assessed upon him, he may issue a certificate containing particulars of such tax and the name of such person to a Magistrate, who shall on receipt thereof issue a direction to the Commissioner of Police to take such measures as may be necessary to prevent such person from leaving the Colony

Recovery of tax from persons leaving the Colony.