

BECHUANALAND PROTECTORATE.

No. 7 OF 1940.

(Promulgated 16th February, 1940.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Income Tax
(Consolidation) Proclamation, 1940.

Whereas it is expedient to consolidate and amend the laws in force in the Bechuanaland Protectorate (hereinafter referred to as "the Territory") relating to the raising of revenue by the imposition of a tax on incomes:

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. The provisions of this Proclamation shall not apply to any person who is subject to the tax imposed by the Bechuanaland Protectorate Native Tax Proclamation, 1932, or any law amending the same. Proclamation not applicable to persons subject to Native Tax.

CHAPTER I.

ADMINISTRATION.

2. (1) For the administration of this Proclamation the High Commissioner may appoint a Collector of Income Tax (hereinafter referred to as "the Collector") and an Assistant Collector of Income Tax (hereinafter referred to as "the Assistant Collector"). Appointments of officers.

(2) The Assistant Collector shall, under the control of the Collector, perform such general official duties as he is required to perform by this Proclamation or by the Collector, and shall, in case of illness, absence or temporary incapacity of the Collector, act in his name and on his behalf, and while so acting shall have and may exercise all the powers conferred, and shall perform the duties imposed, upon the Collector under this Proclamation.

(3) Any office under this Proclamation may be held in conjunction with any other office in the Public Service.

(4) A notification in the *Gazette* that any person appointed to an office herein named has been so appointed shall be conclusive evidence of such appointment without further proof.

Delegation
of
functions.

3. The Collector may, with the approval of the Resident Commissioner, delegate to any officer in the Public Service any duties, powers, and functions by this Proclamation conferred or imposed upon him other than such power of delegation.

Preserva-
tion of
secrecy.

4. (1) Every person appointed under or employed in the carrying out of the provisions of this Proclamation shall preserve, and aid in preserving, secrecy with regard to all matters that may come to his knowledge in his official capacity in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any other person except in the performance of his duties under this Proclamation or by order of a competent Court of Justice.

(2) Every person so appointed or employed shall, before acting under this Proclamation, take and subscribe before the Assistant Resident Commissioner, First Assistant Secretary, a District Commissioner or justice of the peace such oath of fidelity or secrecy as may be prescribed.

(3) Every person who, in contravention of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding two years with or without hard labour.

(4) If any person acts in the execution of his office before he has taken the prescribed oath he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or, in default of payment, to imprisonment for a period not exceeding three months.

(5) Any person appointed by competent authority to audit the assessments and accounts of the Collector shall for the purposes of this section be deemed to be a person appointed under or employed in the carrying out of the provisions of this Proclamation.

CHAPTER II.

INCOME TAX.

PART I.

NORMAL TAX.

5. (1) Where any Proclamation enacts that income tax shall be charged for any year at any rate, there shall be charged, levied and collected throughout the Territory, subject to such conditions and to such exemptions and abatements as are hereinafter provided, an income tax (in this Proclamation referred to as "the normal tax") at that rate and calculated in the manner hereinafter specified in respect of any taxable income received by or accrued to or in favour of any person during that year. Levy of normal tax and rates thereof.

(2) The rate to be levied shall be fixed annually by Proclamation, but the rate so fixed for any year shall be deemed to continue in force until the next such annual determination if, owing to the distribution or cessation of the income prior to such determination, the collection of the tax leviable upon any income received or accrued during that period cannot be postponed.

6. (1) For the purposes of this Chapter— Definitions.

"Gross income" means the total amount, other than receipts or accruals of a capital nature, received by or accrued to or in favour of any person in any year or period assessable under this Chapter from any source within the Territory or deemed to be within the Territory, and includes rents, interest, salaries, stipends, wages, allowances, the estimated annual value of any quarters or board or residence or any other benefit or advantage of any kind granted in respect of employment, whether in money or otherwise, and any pension, stipend, charge, or annuity;

An amount shall be deemed to be derived from a source within the Territory if it is received by or accrues to or in favour of any person ordinarily resident or carrying on business within the Territory, and is received or accrues from any country outside the Territory where, owing to the fact that such person is not domiciled or ordinarily resident therein, the amount is not chargeable with income tax;

“Income” means the amount remaining of the gross income of any person for any such year or period after deducting therefrom any amounts exempt from income tax in the hands of such person;

“Taxable income” means the amount remaining after deducting from the income of any person all the amounts, other than abatements, allowed as deductions under this Chapter;

“Taxable amount” means the amount remaining after deducting from any taxable income any abatement allowed under this Chapter;

(2) The taxable amount shall be the amount upon which the tax to be paid by any person shall be calculated.

Abate-
ments.

7. (1) The abatement to be deducted from the taxable income of any person, other than a company, for the purpose of determining the taxable amount of such person, shall be calculated in the manner set out in this section.

(2) Subject to the provisions of sub-sections (3) and (4) of this section, the abatement allowable in any case shall be the total of such of the following allowances as are applicable—

(a) In the case of every such taxpayer who—

- (i) during any portion of the period in respect of which the assessment is made was married, or
- (ii) during the whole of the period in respect of which such assessment is made was divorced but maintained during any portion of that period a child of his own or a step-child who was, or would have been had he lived, under the age of twenty-one years on the last day of the year of assessment in respect of which, or portion of which, the assessment is made,

a sum of four hundred pounds: Provided that for the purposes of this paragraph any person who was a widower or widow during the whole of the period in respect of which the assessment is made shall be assessed as though he had been married throughout that period, and any married person who has been separated under a judicial

order or written agreement throughout the period in respect of which the assessment is made shall be assessed as though he had been divorced throughout that period;

- (b) in the case of all other persons to whom paragraph (a) of this sub-section does not apply, a sum of three hundred pounds;
- (c) any sum, not exceeding fifty pounds, paid by such person during the period in respect of which a return is made, as premiums upon policies under which he, his wife or his minor children are insured against death, accident or sickness;
- (d) any fees or subscriptions, not exceeding ten pounds in the aggregate, paid by such person during the period in respect of which a return is made to any friendly or benefit society;
- (e) the sum of one hundred pounds for each unmarried child or stepchild of such person maintained by him during any portion of the year of assessment or portion thereof in respect of which the assessment is made and was, or would have been if he had lived, under the age of twenty-one years on the last day of that year of assessment;
- (f) a sum of thirty pounds for each dependant of such person.

(3) In any case in which the period assessed is less than one year, the total of the allowances applicable to any such person under the last preceding sub-section shall be reduced proportionately.

(4) The total of the allowances applicable to any person under the last two preceding sub-sections shall be subject to reduction as follows:—

- (a) In the case of every such person as is referred to in paragraph (a) of sub-section (2) of this section to whom the allowance of four hundred pounds is applicable, the reduction shall be by one pound for every completed ten pounds by which the taxable income of such person exceeds six hundred pounds, or, when the period assessed is less than twelve months, by which it exceeds so much of six hundred pounds as is proportionate to the period assessed;

(b) In the case of all other persons to whom paragraph (a) of this sub-section does not apply, the reduction shall be by one pound for every completed pound by which the taxable income of any such person exceeds three hundred pounds, or, when the period assessed is less than twelve months, by which it exceeds so much of three hundred pounds as is proportionate to the period assessed,

and the amount as so reduced shall be the abatement to be deducted for normal tax purposes.

(5) The term "dependant" in relation to any taxpayer shall mean any person incapacitated by old age or infirmity from maintaining himself, or any child (other than the child or stepchild of such taxpayer) under the age of twenty-one years on the last day of the year of assessment: Provided that such person or child, as the case may be, has been maintained throughout the year of assessment at the expense of such taxpayer and that during such year of assessment the taxpayer has contributed whether in cash or otherwise an amount of not less than thirty pounds to such maintenance.

(6) In the case of companies there shall be an abatement of three hundred pounds, which shall be subject to reduction in accordance with the provisions of paragraph (b) of subsection (4) of this section.

(7) There shall be deducted from the amount of income tax assessed in any year the amount of poll tax paid for that year by any person under the Bechuanaland Protectorate Poll Tax (Consolidation) Proclamation, 1935, on production to the Collector of the relative Poll Tax receipts or duplicates thereof.

Capitalized
or
credited
income
and
income
derived
from
pastoral,
agricultural
or other
farming
operations.

8. (1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but has been credited in account or reinvested or accumulated or capitalized or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Proclamation.

(2) Notwithstanding anything contained in this Proclamation the provisions of the following sub-sections shall apply to the determination of the taxable income derived by any person from pastoral, agricultural, or other farming operations (hereinafter referred to as a "farmer").

(3) Every farmer shall be entitled to the exercise of an option whether the values of livestock and produce held by him and not disposed of at the beginning and end of each year of assessment shall or shall not be taken into account in the determination of the taxable income derived by him from such operations.

(4) Every farmer who elects not to take into account the values of such livestock and produce shall be chargeable in each such year of assessment in respect of all amounts whatsoever for which livestock or produce have been disposed of by him or on his behalf during that year of assessment.

(5) The decision as to the basis upon which a farmer elects to be assessed shall be notified by him in writing to the Collector when rendering his first return under this Proclamation, and the decision so notified shall be binding upon him in respect of all subsequent returns: Provided that the Collector may for good and sufficient reasons, and upon such terms as he may consider necessary for the protection of revenue, permit any farmer, who has so notified his election, to adopt the alternative method in respect of any subsequent years of assessment.

(6) Every farmer who elects to take into account the values of his livestock and produce shall include in the return rendered by him for income tax purposes the values of all livestock and produce held by him and not disposed of at the beginning and end of each year of assessment: Provided that the Collector shall allow such reduction to be made from the values of livestock held by any farmer at the end of any year of assessment as may seem to him to be fair and reasonable, having regard to the risks of mortality attaching to such livestock.

(7) The value to be placed upon such livestock (other than livestock acquired by purchase for stud purposes) shall be—

(a) in the case of livestock acquired by the farmer by purchase, either the purchase price paid or such standard value as is applicable to such livestock;

(b) in the case of livestock acquired by the farmer otherwise than by purchase, the standard value applicable to such livestock.

(8) The standard value applicable to any class of livestock shall be—

(a) such standard value as may be fixed by regulation by the High Commissioner under this Proclamation for that class of livestock;

(b) in the case of any farmer who may have already adopted any standard value, the standard value so adopted in respect of such class of livestock; or

(c) in the case of any farmer rendering his first return in respect of farming operations hereafter or including in a return hereunder such a class of livestock for the first time, either the standard value as fixed by regulation having effect in respect of the period for which his return is rendered or such standard value as he may adopt for that class of livestock, at the option of such farmer.

(9) The exercise of the option under paragraph (c) of the last preceding sub-section shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer under this Proclamation may be varied by him in respect of any subsequent year of assessment, save with the consent and approval of the Collector, and upon such terms as the Collector may require.

(10) The value to be placed upon livestock acquired by purchase for stud purposes shall be the purchase price paid for that livestock.

(11) The value to be placed upon produce included in any return shall be such fair and reasonable value as the Collector may fix.

(12) There shall be admissible as deductions in the determination of the taxable income derived by any farmer any expenditure incurred by him during the year of assessment in respect of—

- (a) dipping tanks;
- (b) boreholes, dams and wells for water and pumping plants;
- (c) fences;
- (d) the eradication of noxious plants;
- (e) the prevention of soil erosion;

- (f) the erection of buildings used in connection with farming operations other than those used for domestic purposes:

Provided that it is established to the satisfaction of the Collector that the expenditure was actually incurred in respect of those operations.

(13) Any decision of the Collector under this section shall be subject to objection and appeal as provided by this Proclamation.

9. (1) Income received or accrued—

- (a) by virtue of any contract made within the Territory for the sale of goods, whether such goods have been delivered or are to be delivered in or out of the Territory; or
- (b) from any service rendered or work or labour done in the carrying on in the Territory of any business, trade, profession or occupation, whether the payment for such service or work or labour is made, or is to be made, by a person resident in or out of the Territory, and wherever payment for such service or work or labour is made or is to be made; and

Income deemed to have been received or to have accrued within the Territory.

(2) Income which would have been received by or accrued to any person, but which by reason of any donation or settlement or other disposition made by that person—

- (a) has been received by or accrued to or in favour of any minor child or children of that person or has been expended for the maintenance, education or benefit of such minor child or children; or
- (b) has been accumulated for the future benefit of any minor child or children of such person,

shall be deemed to be income received or accrued from a source within the Territory.

10. (1) There shall be exempt from the tax—

Exemptions from tax.

- (a) the revenues of building and friendly societies and life assurance companies;
- (b) the receipts of companies or societies carrying on business but not for the purpose of profit or gain which is to be divided amongst or credited to the shareholders or members thereof, except as regards the receipts from investments of such societies;
- (c) the revenue of all ecclesiastical, charitable and educational institutions of a public character;

- (d) the salaries and emoluments payable in respect of their offices to Consuls of foreign countries and members of their staffs who are not British subjects nor permanently resident in the Territory;
- (e) the salaries and emoluments payable to all persons in the service of His Majesty's Government in the United Kingdom (otherwise than under the Bechuanaland Protectorate Government) or His Majesty's Government in the Union of South Africa in respect of their offices, whether the service be naval, military, or other service;
- (f) war pensions or gratuities, whether granted from United Kingdom funds or by the Government of any British Dominion, Possession or Protectorate;
- (g) dividends and interest on debentures or debenture stock received or accrued from any company in respect of which normal tax has been paid by such company;
- (h) income on which normal tax has been paid in the Territory;
- (i) interest on sums deposited in the Post Office Savings Bank of the Territory;
- (j) interest received by or accruing to or in favour of any person from stock or securities (including Treasury bills) issued by His Majesty's Government in the United Kingdom or His Majesty's Government in the Union of South Africa subject to a condition that such interest shall be exempt from income tax:

Provided that, notwithstanding these exemptions, all amounts which fall under paragraphs (g) and (h) shall be set out by the taxpayer in the return rendered by him.

(2) The exemptions provided by paragraphs (a), (b) and (c) of sub-section (1) shall not extend to the salaries, wages, allowances, or pensions of persons employed by any such society, institution or company, although the same may be paid wholly or in part out of the income, revenue or funds thereof.

Persons carrying on business which extends beyond the Territory.

11. In the case of persons whose business extends to any other country, the taxable income shall be the sum which shall bear the same proportion to the whole net profits as the assets in the Territory bear to the total assets of such person: Provided that where

the Collector on the one hand, or the taxpayer on the other hand, deems such method of estimating the income for taxation to be inequitable or inexpedient, the Collector or taxpayer may claim the right to an assessment on the actual profits derived from sources in the Territory.

12. (1) Every company which is subject to income tax and which pays interest upon or in respect of debentures or debenture stock shall be entitled to deduct from each amount of interest paid to the holder of any such debenture or debenture stock the proportionate amount of income tax paid by such company in respect of the total of such interest.

Deductions
in respect
of interest
on
debentures,
etc.

(2) The Collector shall, on the receipt of a claim from the holder of any such debenture or debenture stock resident in the Territory, refund to such holder such amount of any income tax deducted under this section as such holder would not have been chargeable with if such deduction had not been made, provided that the claim for refund shall have been received from such holder within two years from the end of the year of assessment in respect of which the interest is set out in the taxpayer's return as required by section *ten* of this Proclamation, or within such further time as the Collector may for good cause allow.

(3) For the purposes of this section "interest upon or in respect of debentures or debenture stock" shall include any interest payable under and by virtue of a debenture or debenture trust-deed, whether in the form of a mortgage or any other instrument or document acknowledging indebtedness.

13. (1) For the purpose of ascertaining the taxable income of any person there shall be deducted from the income of such person—

Determina-
tion of
taxable
income.

- (a) losses and outgoings actually incurred in the Territory by the taxpayer in the production of his income, including such expenses incurred outside the Territory in the production of the taxable income as the Collector may allow, provided that such losses or outgoings are not of a capital nature;
- (b) sums expended for the repairs of property occupied for the purpose of trade or in respect of which income is receivable, and sums expended for the repair of machinery, implements, utensils, and articles employed by the taxpayer for the purposes of his trade;

such sums shall be the actual expenditure incurred by the taxpayer during the year of assessment;

- (c) such sum as the Collector may think just and reasonable as representing the diminished value by reason of wear and tear during the year of assessment of any machinery, implements, utensils and articles used by the taxpayer for the purposes of his trade: Provided that where a deduction has been allowed under paragraph (b) of this sub-section the Collector shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph and provided also that in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;
- (d) any sum contributed during the year of assessment by way of current contribution to any duly established superannuation, pension, widows' or orphans' fund by any person holding any office or employment where the making of such a contribution is a condition of the holding of such office or employment;
- (e) in respect of income from mining operations an allowance for the redemption of capital expenditure in lieu of the allowance in paragraph (c) of this sub-section. Such allowance shall be ascertained as follows:—

- (i) The balance of capital expenditure unredeemed at the commencement of the year of assessment after subtracting therefrom any recoupments received during the year from capital expenditure (irrespective of the date when such capital expenditure was originally incurred) shall be added to the amount of capital expenditure ranking for redemption incurred during that year.

The aggregate amount of the sums so added shall then be divided by the estimated number of years during which mining operations may be expected to continue. That number of years is hereinafter referred to as "the life of the mine".

The quotient resulting from the division shall be the amount to be deducted as aforesaid.

(ii) The life of the mine shall be determined by the Mining Inspector, but such determination shall be subject to objection and appeal to the Court under the provisions of Part III of Chapter III of this Proclamation as if it were a decision of the Collector. When the life of the mine, estimated and determined as aforesaid, exceeds thirty years, then so long as the estimate exceeds that period the allowance shall be calculated on a period of thirty years.

(iii) The life of the mine shall be subject to revision at the instance of the person liable to the tax or of the Collector, whenever any material alteration takes place in any circumstances relating to the mine or its working which affects the life of the mine, and shall otherwise be subject to revision in every third year after the last preceding determination. In any such revision the same provisions shall apply as in the original determination of the life of the mine.

No such revision shall affect any assessment determined or any allowance made or presumed to have been made under this Proclamation or any previous law for the taxation of the profits of mining.

(iv) When separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately according to the estimated life of each such mine.

(v) For the purposes of this subsection "capital expenditure" means expenditure—

(a) on shaft sinking and equipment, including any single renewal or replacement of

equipment which, together with the accessories thereto, exceeds in cost two thousand pounds; and

(b) on development, general administration and management prior to the commencement of production or during any period of non-production;

“ expenditure on shaft sinking ” includes the expenditure on sumps, pump-chambers, stations and ore bins accessory to a shaft;

“ expenditure ” means net expenditure after taking into account any rebates, recouplements or returns from expenditure.

(vi) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Proclamation shall be the balance shown to be unredeemed in the last assessment for normal income tax made by the Collector prior to the commencement of this Proclamation;

(f) an allowance in respect of any machinery, implements, utensils and articles used by the taxpayer for the purpose of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the difference between the original cost to such taxpayer of such machinery, implements, utensils or articles and the total amount arrived at by adding all the allowances made in respect thereof under paragraph (c) of this sub-section to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such machinery, implements, utensils and articles.

(2) There shall be set off any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment. For the purposes of this sub-section “ assessed loss ” means any amount, as established to the satisfaction of the Collector, by which the

deductions admissible under this section and section *fourteen* exceeded the income in respect of which they are so admissible.

14. Where a taxpayer, either alone or with other persons, carries on or is interested as a partner (otherwise than as a member of a company the capital whereof is divided into shares) in more than one trade in the Territory, and makes a profit in one or more of such trades and a loss other than a loss of a capital nature in another or others during the same year of assessment, such taxpayer shall be entitled to deduct the sum of the losses from that of the profits.

Net profit
in case of
more than
one trade.

15. (1) No deduction shall in any case be made in respect of any of the following matters:—

Deductions
not
allowable.

- (a) The cost incurred in the maintenance of any taxpayer, his family or establishment;
- (b) domestic or private expenses;
- (c) any loss or expense which is recoverable under any insurance contract or indemnity;
- (d) normal tax or supertax;
- (e) income carried to any reserve fund or capitalized in any way;
- (f) any expenses incurred in respect of any amounts received or accrued which are not included in the term "income" as defined in this Chapter.

(2) No deduction shall, as regards income derived from any trade, be made in respect of any of the following matters:—

- (a) Any moneys not wholly or exclusively laid out or expended for the purposes of trade;
- (b) the rent or value or cost of repairs to any premises not occupied for the purposes of trade, or of any dwelling-house or domestic premises except such part thereof as may be occupied for those purposes;
- (c) interest which might have been made on any capital employed in trade;
- (d) any debts owed to the taxpayer, except such as are proved to the satisfaction of the Collector to be bad or doubtful, deductions for doubtful debts being made according to a value estimated by the Collector;
- (e) debenture interest.

Definition
of "trade".

16. For the purposes of this Chapter, the expression "trade" shall include every profession, trade, business, employment, or calling.

PART II.

SUPERTAX.

Levy of
supertax
and rates
thereof.

17. (1) Where any Proclamation enacts that supertax shall be charged for any year at any rate, then in addition to the normal tax chargeable under this or any subsequent Proclamation there shall be charged, levied, and collected throughout the Territory, in accordance with the provisions of this Proclamation, an additional tax (in this Proclamation referred to as "the supertax") in respect of such incomes as are hereinafter declared to be subject to supertax.

(2) The supertax shall be calculated in the manner specified hereunder, subject to the conditions and abatements in this Part provided.

(3) The rate to be levied shall be fixed annually by Proclamation, but the rate so fixed for any year shall be deemed to continue in force until the next such annual determination if, owing to the distribution or cessation of the income prior to such determination, the collection of the tax leviable upon any income received or accrued during that period cannot be postponed.

Definitions.

18. (1) For the purposes of this Part the expression "income subject to supertax" means an amount as determined in section *twenty-one* received by or accrued to or in favour of any person other than a public company and exceeding in the aggregate two thousand five hundred pounds in any year of assessment.

(2) In this section—

"public company" means any company other than a private company;

"private company" means any company wherein—

(a) shares representing not less than ninety per centum of the share capital of the company are held or controlled by not more than any five shareholders:

- Provided that where shares in a company are registered in the name of a partnership each partner shall be deemed to be a shareholder having a holding in the company in proportion to his interest in that partnership; or
- (b) shares representing not less than fifty-one per centum of the share capital are held or controlled by one person; or
 - (c) not less than seventy-five per centum of the working capital has been supplied by one person:

Provided that a company shall not be deemed to be a private company—

- (i) if shares therein representing not less than eighty per centum of the share capital are held or controlled by a public company; or
- (ii) if it has distributed as dividends during the year of assessment a sum not less than seventy-five per centum of the income subject to supertax accrued to or received by it during the year of assessment.

For the purposes of this sub-section—

“ share capital ” means subscribed capital and includes vendors', promoters' and founders' shares.

19. (1) Where it appears to the Collector that any one person other than a public company controls more than one private company, the Collector shall assess such private companies for supertax jointly as a single company. Joint assessment of private companies.

(2) Any assessment in terms of this section shall be apportioned amongst the several companies assessed jointly in proportion to each company's share in the massed income subject to supertax of all such companies jointly, and a separate notice of assessment shall be issued to each such company notifying the portion payable by it of the supertax chargeable under the joint assessment.

(3) Each such notice of assessment shall disclose to the company concerned the names of the other companies with which it has been assessed jointly as aforesaid.

(4) Any such company may object to its assessment jointly with other companies as aforesaid or to the apportionment of its share in the supertax and may appeal against any decision of the Collector in respect of any such objection; Provided that if two or more companies appeal against such joint assessment, such appeals may, if the companies so desire, be taken as one appeal.

(5) If such joint assessment is modified in any way, whether by the Collector or by the Court on appeal, a corresponding amendment shall be made in all the assessment notices issued to the several companies concerned.

Limitation
of supertax
on private
companies.

20. The amount of tax payable by any private company (as defined in section *eighteen*), as normal tax and supertax conjointly, shall not exceed the amount which would be payable as normal tax and supertax conjointly by a person other than a company on a like taxable amount and amount subject to supertax:

Provided however that the amount so payable by such company shall not be less than the amount payable by such company as normal tax on such taxable amount.

Method of
determining
amount of
income
subject to
supertax.

21. (1) To determine the amount of any income subject to supertax there shall be taken the aggregate of—

- (a) the taxable income of the taxpayer as determined for normal tax purposes;
- (b) any dividends and interest on debentures or debenture stock excluded in the calculation of that taxable income under the provisions of paragraph (g) of sub-section (1) of section *ten* of this Proclamation;
- (c) an amount equal to the nominal value of any bonus shares, debentures or other securities awarded to the taxpayer by way of capitalizing the profits of a company of which such taxpayer was a shareholder or member, where such profits have not already been added or allocated to the income of the shareholder under the provisions of sub-section (3) of this section;
- (d) any amount allocated by the Collector to the taxpayer from the undistributed profits of any company under the provisions of sub-section (3) of this section;

- (e) any deduction made for supertax purposes in respect of the last preceding year of assessment under the provisions of paragraph (b) of sub-section (2) of this section;
- (f) any dividends or other payments received by the taxpayer on the winding up of a company in which he was a shareholder, in so far as such dividends or other payments represent a share of profits earned by such company whether before or after the commencement of such winding up.

(2) There shall be set off against the aggregate determined under the provisions of sub-section (1) of this section—

- (a) any expenditure or losses, other than expenditure or losses of a capital nature, incurred by the taxpayer within the Territory, in the production of any amounts included in his income subject to supertax under the provisions of paragraphs (b) and (c) of sub-section (1) of this section;
- (b) any balance of loss as at the close of the year of assessment under charge which the taxpayer would be entitled under the provisions of sub-section (2) of section *thirteen* and section *fourteen* of this Proclamation to carry forward and set off for normal tax purposes against his taxable income for the next succeeding year of assessment:

Provided that in the event of the balance of loss so ranking for deduction exceeding an amount sufficient to relieve the taxpayer from liability to supertax in respect of the year of assessment under charge, the amount deducted shall be limited to a sum sufficient to give such relief.

(3) (a) Whenever the dividends distributed during any period covered by its annual accounts by any private company are not in the opinion of the Collector a fair and reasonable distribution of the accumulated profits available for that purpose, or whenever during such a period no distribution has been made by such a company from the accumulated profits so available, the Collector may, for the purpose of determining the income subject to supertax of any shareholder in the said company, allocate to such shareholder such sum, proportionate to the amount of his

shareholding in the company, as may seem to the Collector to be fair and reasonable, having regard to the circumstances of the company. Any decision of the Collector under this sub-section shall be subject to objection and appeal.

(b) Any amount so added or allocated by the Collector shall be deemed to have accrued to the shareholder on the last day of the accounting period the accounts of which disclose the accumulated profits in respect of which the Collector's allocation is made.

(c) For the purposes of this sub-section "private company" means any company wherein—

- (i) not more than ten of the largest shareholders hold ninety per centum of the shares; and
- (ii) restrictions are imposed upon the right to transfer shares; or
- (iii) no invitation has been issued to the public to subscribe for any shares or debentures:

Provided that there shall not be included within the term "private company" any company wherein not less than ninety per centum of the shares are held by a company or companies, wheresoever registered or carrying on business which do not fall within the terms of this definition.

(d) The provisions of this sub-section shall not apply to any profits of a private company as defined in section *eighteen*.

Assessment
for normal
tax to be
final for
supertax
purposes

22. When the taxable income of any person has been finally determined for normal tax purposes, the amount so determined shall be final for the purpose of any supertax assessment upon such person.

Abatement.

23. (1) The abatement to be allowed in respect of any income subject to supertax shall be the sum of two thousand five hundred pounds, which sum shall be diminished by one pound for every pound by which the aggregate income subject to supertax, after making allowance for any amounts to be set off against that income under the provisions of section *twenty-one* of this Proclamation, exceeds two thousand five hundred pounds.

(2) The amount remaining after the deduction of any abatement allowable shall be the amount subject to supertax.

24. Dividends received by or accruing to or in favour of any person chargeable with supertax, not ordinarily resident nor carrying on business in the Territory, shall be exempt from the supertax, provided such dividends are not paid nor payable within the Territory.

Dividends accruing to non-residents exempt.

25. Every company which—

(a) pays interest upon or in respect of debentures or debenture stock; or

(b) pays any dividend upon shares in such company,

Duty of companies to furnish returns.

shall, within thirty days after the thirtieth day of June in each year, furnish in the prescribed form to the Collector a return giving the full name and address of each holder of such debentures or shares and the amount of interest or dividend paid to each such holder during the twelve months ending such thirtieth day of June.

26. Every bank carrying on business in the Territory or company dealing in or negotiating bearer warrants shall keep a record of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall, in such manner and form and at such times as may be prescribed or as the Collector may require, furnish particulars of such payments.

Return of payments in respect of bearer warrants.

27. It shall be the duty of every person chargeable with the supertax to give notice in writing to the Collector that he is so chargeable.

Personal return.

CHAPTER III.

GENERAL PROVISIONS.

PART I.

RETURNS AND ASSESSMENTS.

28. (1) The Collector shall annually give public notice in the prescribed manner that all persons liable to taxation, whether personally or in any representative capacity, under the provisions of this or any subsequent Proclamation, are required to furnish within thirty days after the date of such notice, or within such further time as the Collector may for good cause allow, returns for the assessment of the tax. Such notice shall state the places at which the prescribed forms may be obtained, and it

Notice by collector requiring returns and manner of furnishing returns.

shall be the duty of all such persons, and of all persons required by this Proclamation to furnish such returns, to apply for the prescribed forms of returns. Any such person failing to furnish such return shall not be relieved from any penalty by reason only of his having received no notice to furnish the same, or of the prescribed form not having been delivered to him; but the Collector may, if he deem it so advisable, cause forms to be delivered or sent by post to any person.

(2) If in any particular case the Collector has reason to believe that any tax payable may not be recovered, he may, prior to the issue of any such annual notice, require any person by notice in writing to render *interim* accounts for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.

(3) Every person shall, on publication of the annual notice, or on receipt of such written notice, prepare and deliver in the prescribed manner, within the period mentioned in such notice, to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed. Such return shall be signed by the taxpayer, or by his agent duly authorised in that behalf.

(4) Any person signing any such return shall be deemed for all purposes in connection with this Proclamation to be cognizant of all statements made therein.

(5) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Proclamation shall be deemed to be duly made and signed by the person affected, unless such person proves that such return was not made or signed by him or on his behalf.

(6) If any person fails to make such a return, the Collector may appoint a person to make a return on behalf of such person; and the return made by the person so appointed shall be, for all the purposes of this Proclamation, the return of the person liable to make the same.

(7) The returns furnished by or on behalf of every person required to furnish returns under this Proclamation shall contain such particulars, be in such form, and be furnished to the Collector at such time as may be prescribed or publicly notified.

(8) The Collector may, when and so often as he thinks necessary, require any person to make fuller or further returns respecting any matter of which a return is required or prescribed by this Proclamation.

(9) All returns required to be furnished under this Proclamation shall be delivered at, or sent by post to, the prescribed address. Any such return shall if marked with the words "Income Tax" and "On His Majesty's Service" be carried and delivered free of postal or other charges by the postal department.

(10) The return of income to be made by any person shall be based on the amount of gross income which was received by or accrued to or in favour of such person in respect of any year of assessment chargeable under this or any subsequent Proclamation, and shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge:

Provided that where it is established to the satisfaction of the Collector that the income of a person cannot be conveniently returned for that period, the Collector may accept returns made up to a date agreed by him, but any such return shall be deemed for all purposes of this Proclamation to be a return for the period covered by the year of assessment under charge.

(11) If any person, when called upon to furnish a return of income under this Proclamation, is unable to furnish such return, the Collector may accept a return of estimated income for assessment, and such assessment shall be adjusted by the Collector when an actual return of income is furnished.

(12) Persons carrying on any business in partnership shall be liable to make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each such partner shall be separately and individually liable for the rendering of the joint return, but they shall be liable to tax only in their separate individual capacities.

(13) Every person carrying on any trade or business in the Territory shall keep a proper record of his transactions in the English language, and for the purposes of this sub-section a proper record shall include books containing all such entries relating to and exhibiting the nature of his transactions

as (regard being had to the occupation of the person concerned and the scale on which his trade or business is carried on) might reasonably be expected or required to be kept. Every person who fails to keep a proper record of his transactions as required by this sub-section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year.

Production
of
documents
and
evidence
on oath.

29. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof, the Collector may require any person to produce for examination by the Collector or by any person appointed by him for that purpose, at such time and place as may be appointed by the Collector in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents that may be deemed necessary for the purpose of this Proclamation.

(2) The Collector may, by notice in writing, require any person entitled to or in receipt of any income (whether on his own behalf or as a public officer of a company or as an agent or trustee of any person), or any person whom the Collector may deem able to furnish information, to attend at a time and place to be named by the Collector for the purpose of being examined on oath respecting the income of any person, or any transactions or matters affecting the same or any of them or any part thereof.

Any person so attending may be allowed by the Collector any reasonable expenses necessarily incurred by such person in so attending.

(3) Every person to whom a form of return is sent by the Collector shall complete the same in accordance with the requirements of the Collector and shall return it to the Collector at such time and place as the Collector may direct.

Income of
a married
woman.

30. (1) The income of a woman married with or without community of property, and not separated from her husband under a judicial order or written agreement, shall, for the purposes of this Proclamation, be deemed to be income accrued to her husband, and shall be included by him in returns of income required to be rendered by him under this

Proclamation: Provided that in the event of the death or insolvency of the husband during any year in respect of which such income is chargeable, the income of the wife for the period elapsing between the date of such death or insolvency and the last day of the year of assessment shall be taxable as the separate income of such wife: Provided further that if either the husband or the wife makes written application to the Collector, returns of income may be rendered by such husband and wife separately, and assessments may be levied upon each separately of an amount of tax proportionate to the share of the combined incomes returned by each: Provided also that the total amount so assessed upon the husband and the wife together shall not be less than the total amount which would have been assessed upon the husband alone if the income of both husband and wife had been included in one return, as required by this section.

(2) Any amount payable by way of alimony or allowance by one spouse to the other under any judicial order or written agreement of separation shall be returned as the separate income of the spouse to whom the payment is made, and shall be assessable only in the hands of such spouse.

31. (1) Every person shall, if required by the Collector, furnish to him, in such form and at such time as may be prescribed or as the Collector may require, returns of all or any particular class of persons employed by him, and the earnings, salary, wages, allowances, or pensions, whether in money or otherwise, paid or allowed to each person so employed.

Duty to
furnish
returns of
persons
employed.

(2) Every person carrying on business in the Territory shall, in such manner and form and at such times as may be prescribed or as the Collector may require, furnish to the Collector returns showing—

- (a) all payments made to any person in respect of any share or interest in such business;
- (b) all moneys received by him from any person on deposit for any fixed time or period with or without interest;
- (c) all such other information in his possession with regard to the income received by or accruing to or in favour of such person as may be prescribed or as may be required by the Collector.

Duty to
furnish
information
on request.

32. Any person, whether liable for taxation under this Proclamation or not, to whom any notice or request for information is sent by the Collector or by any officer acting under the authority of the Collector, shall comply with the terms of that notice or furnish the information so requested under pain of the penalties for default under the next succeeding section.

Offences.

33. Any person who—

- (a) fails or neglects to furnish any return as and when required by this Proclamation or the regulations or by the Collector under the powers conferred by this Proclamation or by the regulations; or
- (b) without just cause shown by him, refuses or neglects to attend and give evidence as and when required by the Collector or any officer duly authorised by him, or to answer truly and fully any questions put to him, or to produce any books or papers required of him by the Collector or any such officer; or
- (c) obstructs or hinders any officer in the discharge of his duties under this Proclamation,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year, and may be further sentenced to a fine not exceeding ten pounds in respect of each day during which any such default continues after the conviction.

Estimated
assess-
ments.

34. (1) In every case in which any taxpayer makes default in furnishing any return, or if the Collector is not satisfied with the return furnished by any taxpayer, the Collector may make an assessment in such sum as in the Collector's judgment ought to be charged in accordance with this Proclamation, and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall be liable to pay the tax upon the same.

(2) Any such assessment shall be subject to objection and appeal as provided by this Proclamation, but the taxpayer, if he has made default, shall not be entitled to any costs on such objection or appeal: Provided that if it appears to the Collector that any

person is unable from any cause to furnish an accurate return of his income, the Collector may agree with such person what shall be the taxable amount of such income.

35. (1) Any taxpayer who makes default in rendering a return in respect of any year of assessment shall be chargeable in respect of his taxable income for such year of assessment with a double rate of tax, and any taxpayer who omits from his return any amount which should have been included therein shall be chargeable with an amount equal to the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as finally determined after including the amounts omitted and he shall be required to pay this amount in addition to the tax properly chargeable in respect of his true taxable income.

Additional tax in the event of default or omission.

(2) The additional rates and amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Collector in terms of section *thirty-four* as well as in cases where such taxable income or any part thereof is determined from accounts rendered by the taxpayer.

(3) If the Collector is satisfied that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of the tax chargeable, or that any such omission was not due to any intent to evade taxation on the part of the taxpayer, he may remit such part or all of the said double rate or additional charge as he may think fit.

(4) The powers conferred upon the Collector by this section shall be in addition to any right conferred upon him by this Proclamation to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.

36. (1) If at any time the Collector is satisfied that any amounts which should have been subject to tax have not been assessed to tax under this Proclamation or any previous Income Tax Proclamation, he shall raise assessments in respect of such amounts, notwithstanding that assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amounts in question are assessable.

Additional assessments.

(2) The provisions of sections *thirty-four* and *thirty-five* of this Proclamation shall apply to any assessments or additional assessments made by the Collector under the powers conferred by this section.

Assess-
ments
and the
recording
thereof.

37. (1) The particulars of every assessment and the amount of tax payable thereon, shall be entered in an assessment register, which shall be kept in the office of the Collector.

(2) Upon entering any assessment in any assessment register, the Collector shall give notice of the assessment to the taxpayer whose income has been assessed.

(3) Such notice shall be in the form prescribed, and shall be sent to such person by post in a registered letter or envelope, or delivered to such person in such other manner as the Collector may consider necessary or convenient.

(4) The Collector shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to him within twenty-one days after the date of such notice or within such further time as the Collector or the Court may for good cause allow.

Inspection
of registers.

38. The register of income tax assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies, certified by or on behalf of the Collector, of such entries therein as relate to the assessment of his own income.

PART II.

REPRESENTATIVE TAXPAYERS.

Representative
taxpayers.

39. For the purposes of this Proclamation "representative taxpayer" means—

- (a) in respect of the income of any company, the public officer thereof;
- (b) in respect of the income of every person permanently or temporarily absent from or resident out of the Territory, the agent of such person; and for the purposes of this Proclamation every person in the Territory having the receipt, management or control of income on behalf of any person absent or resident as aforesaid, or remitting or paying income to or receiving moneys for such person, shall be deemed to be the agent of such person;

- (c) in respect of the income of any trust, or any minor, or mentally disordered and defective person, or any other person under legal disability, the trustee, guardian, curator or other person entitled for the time being to the receipt, management, disposal or control of such income, or remitting or paying to, or receiving moneys on behalf of, such person under disability;
- (d) in respect of income paid under the decree or order of any Court to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
- (e) in respect of any person who dies during any year of assessment, or who dies after the close of any year of assessment but before rendering a return of his income for such year of assessment, the executor or administrator of the estate of such person;

but nothing herein contained shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Proclamation.

40. Every representative taxpayer, ^{as Liability of} regards the income to which he is entitled in ^{representative} his representative capacity, or of which in ^{taxpayer.} such capacity he has the management, receipt, disposal, remittance, payment or control, shall be chargeable with the taxation imposed by this or any subsequent Proclamation and shall be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, except that no representative taxpayer (not being a public officer of a company) shall, save as provided by section *forty-two*, be personally liable for the payment of any tax beyond the amount of the income of which he has in such capacity aforesaid the management, receipt, disposal or control: Provided that nothing herein contained shall, in any case where the representative taxpayer acts as an agent or trustee or in any other capacity for several persons, prevent him from claiming that each agency or trust or other capacity shall be treated separately for the purpose of claiming any exemption or deduction provided by this Proclamation.

Right of
representative
taxpayer to
indemnity.

41. Every representative taxpayer who, as such, pays any tax shall be entitled to recover from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, so much as is required to indemnify him in respect of payment.

Personal
liability of
representative
taxpayer.

42. Every representative taxpayer shall be personally liable for any tax payable in respect of any assessment made upon him in his representative capacity if, while it remains unpaid—

- (1) he alienates, charges, or disposes of the income in respect of which the tax is chargeable; or
- (2) he disposes of or parts with any fund or money which is in his possession or comes to him after the tax is payable, when from or out of such fund or money the tax could legally have been paid.

Absent
shareholder.

43. (1) Where a shareholder or a member of a company is absent from the Territory, such company shall, for the purposes of this Proclamation, be deemed to be the agent for such shareholder or member, and shall, as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Territory.

(2) Every company assessed for any tax shall be entitled to deduct from any dividends becoming payable within twelve months after the payment of such tax an amount calculated at the same rate per pound as the rate at which the company has been assessed: Provided that nothing in this sub-section contained shall be construed as affecting the validity of any agreement or contract containing an express stipulation to the contrary.

Collector's
power to
appoint
agent.

44. The Collector may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Proclamation, and may be required to make payment of any tax due from any moneys, including pensions, salary, wages or any other remuneration, which may be held by him for or due by him to the person whose agent he has been declared to be.

45. The Collector or any person empowered under this Proclamation shall have such and the like remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

Remedy
against all
property.

46. Every company carrying on business or having an office in the Territory shall at all times be represented by an individual residing therein. That individual shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purpose of this Proclamation, and the following provisions shall have effect:—

Public
officers of
companies.

- (a) The representative shall be called the public officer of the company, and shall be appointed, in the case of a company which at the commencement of this Proclamation so carries on business or has an office in the Territory, within two months after such commencement, and, in the case of a company which thereafter begins to carry on business or has an office in the Territory, within one month after so beginning to carry on business or acquiring the office. In default of any such appointment, the public officer of any company shall be such managing director, director, secretary, or other officer of the company as the Collector may designate for that purpose;
- (b) every company shall also, within the period prescribed by paragraph (a), appoint a place within the Territory at which any notices or other instruments under this Proclamation affecting the company may be served or delivered, or to which any such notices or documents may be sent;
- (c) no appointment shall be deemed to have been made under paragraph (a) or paragraph (b) until notice thereof, specifying the name of the public officer and an address for service or delivery of notices and documents, has been given to the Collector;
- (d) every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with paragraph (b) of this

section; and every change of public officer or of the place for the service or delivery of notices shall be notified to the Collector within fourteen days of such change taking effect;

- (e) any company which makes default in appointing a public officer or appointing a place for the service or delivery of notices in accordance with this Proclamation, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices, or which fails to notify to the Collector any change of public officer or of the place for the service or delivery of notices, and every person who acts within the Territory as agent or manager or representative of such company, shall be liable to a fine not exceeding five pounds for every day during which the default continues;
- (f) every notice, process or proceeding which under this Proclamation may be given to, served upon, or taken against any company, may be given to, served upon, or taken against its public officer; and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon, or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company;
- (g) every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Proclamation by a taxpayer, and, in case of default, shall be liable to the penalties provided in respect of defaults by a taxpayer;
- (h) everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents;
- (i) the absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Proclamation; but the company shall in all respects be subject to and liable to comply with the provisions of this Proclamation, as if there were no requirement to appoint such officer.

PART III.

OBJECTIONS AND APPEALS.

47. (1) Objections to any assessment made under this Proclamation may be made within twenty-one days after the date of the assessment notice or within such further time as the Collector or the Court may for good cause allow, in the prescribed manner and under the prescribed terms, by any taxpayer who is aggrieved by any assessment in which he is interested.

Time and manner of lodging objections.

(2) Subject to the provisions of the last preceding sub-section, no objection shall be entertained by the Collector which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the taxpayer satisfies the Collector that reasonable grounds exist for delay in lodging his objection.

(3) Every objection shall be in writing, and shall specify in detail the grounds upon which such objection is made.

(4) On receipt of a notice of objection to an assessment, the Collector may reduce or alter the assessment or may disallow the objection, and shall send the taxpayer notice of such alteration, reduction or disallowance, and shall record in the assessment register any alteration or reduction made in the assessment.

(5) Where no objections are made to any assessment, or where objections have been allowed or withdrawn, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

48. The burden of proof that any income is exempt from or not liable to any tax chargeable under this or any subsequent Proclamation, or is subject or entitled to any deduction, abatement or set-off, shall be on the person claiming such exemption, non-liability, deduction, abatement or set-off.

Onus of proof as to exemptions, etc.

49. (1) Any taxpayer who is dissatisfied with any decision of the Collector as notified in the notice of alteration or reduction of an assessment or disallowance of an objection, or with any other decision which is subject to objection or appeal as provided by this Proclamation, may appeal therefrom to the Court: Provided that unless the taxpayer gives notice of such appeal within the period prescribed by sub-section (2) his objection shall be deemed to be determined.

Appeal against Collector's decision.

(2) Notice of such appeal shall be in writing and shall be lodged with the Collector within twenty-one days after the date of the notice mentioned in sub-section (4) of section *forty-seven*, or within such further time as the Collector or the Court may for good cause allow.

(3) At any such appeal the taxpayer shall be limited to the grounds stated in his notice of objection.

(4) If the assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.

(5) At least ten days before the date fixed for the hearing of an appeal the Collector shall send to the taxpayer, or to his duly authorised attorney or representative, a written notice of the time and place appointed for the hearing of such appeal.

(6) The hearing of an appeal may be adjourned by the Court from time to time to any time and place that may seem convenient.

(7) The sittings of the Court for the hearing of such appeals shall not be public, and the Court shall, at any time on the application of the appellant, exclude from such sitting, or require to withdraw therefrom, all or any persons whomsoever whose attendance shall not be necessary for the hearing of the appeal under consideration: Provided, however, that the Court may authorise the publication of the legal considerations on which any judgment is based.

(8) The Collector, or any person authorised by him, may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, solicitor or agent.

(9) The Court may alter, or order the alteration of, the assessment register in accordance with the decision given on any appeal, but may only make an order as to costs when the claim of the Collector is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

Obligation
to pay not
suspended
pending
appeal.

50. The obligation to pay and the right to receive and recover any tax chargeable under this Proclamation shall not, unless the Collector shall so direct, be suspended by any appeal or pending the decision of the Court under the next succeeding section; but if any

assessment is altered on appeal or in conformity with any such decision, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable.

51. Whenever a question of law arises with regard to any assessment or altered or reduced assessment under this Proclamation, the Collector may, within thirty days after receipt of any notice of objection or any notice of appeal under this Proclamation, of his own motion or at the request of the taxpayer concerned, state a case for the determination of such question by the Court.

52. In this Proclamation, unless inconsistent with the context, the expression "the Court" shall mean the High Court of the Bechuanaland Protectorate:

Provided that when the High Court shall not be in session any application for extension of time under sub-section (4) of section *thirty-seven* or sub-section (1) of section *forty-seven* or sub-section (2) of section *forty-nine* or sub-section (3) of section *sixty-one* may be made to the Assistant Resident Commissioner exercising jurisdiction under section *eleven* of the Bechuanaland Protectorate High Court Proclamation, 1938.

PART IV.

PAYMENT AND RECOVERY OF TAX.

53. (1) Any tax chargeable under this or any subsequent Proclamation shall be paid on such days and at such places as may be notified by the Collector: Provided that nothing herein contained shall take away the right of any taxpayer to pay his tax either through the post or personally at the chief office of the Collector.

(2) Interest at six per centum per annum shall be payable on any amount not paid by the taxpayer on or before the due date fixed in the Collector's notification.

54. Subject to the provisions of this Proclamation the taxes leviable shall be payable—

(a) by the representative taxpayer in respect of any income received or controlled by him in such representative capacity;

(b) in respect of every other income and in all other cases, by the person by whom the income is received or to whom or in whose favour it accrues or is deemed to accrue or who is legally entitled to the receipt thereof: Provided that any person who is required under the provisions of this Proclamation to include in his income any income which has been received by or accrued to or in favour of his minor child or children shall be entitled to recover from the funds held by or on behalf of such child or children such proportion of the taxation paid by him under this Proclamation as is due to the inclusion in his income of the income of such child or children.

Recovery
of tax.

55. Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the Government and shall be payable to the Collector in the manner and at the time and place prescribed, and may be sued for and recovered by action in any Court of competent jurisdiction by the Collector suing on behalf of the Government.

Tax to be a
liquid debt.

56. (1) Proceedings in any Court for the recovery of any tax shall be deemed to be proceedings for the recovery of a liquid debt.

(2) In any action or proceedings for the recovery of any tax it shall not be competent for the defendant to question the correctness of the assessment register or any certified extract therefrom.

Tax a first
charge
upon
assets.

57. Any tax due and payable under the provisions of this or any subsequent Proclamation shall be a first charge upon the assets of the person by whom such tax is due.

Conclusive
evidence of
making of
assessment.

58. The production of any assessment register, or of any document under the hand of the Collector purporting to be a copy of or extract from any assessment register, shall be conclusive evidence of the making of the assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such register or document are correct.

PART V.

MISCELLANEOUS.

59. If it is proved to the satisfaction of the ^{Refunds.} Collector that the amount paid by any person is in excess of the amount properly chargeable under this or any subsequent Proclamation, the Collector may authorise a refund to such person of any tax overpaid: Provided however that no such refund may be authorised unless the claim therefor is made within two years after the date when the payment was made.

60. Any person— ^{Offences.}
- (a) who knowingly and wilfully makes any false statement in any return, or makes any false answer, whether verbally or in writing, for the purpose of evading, or enabling any other person to evade, assessment or taxation; or
 - (b) who by any falsehood, wilful neglect, fraud, art, or contrivance whatsoever, evades or attempts to evade assessment or taxation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year. Where the offence was as described in paragraph (b) of this section, the offender shall be liable, in addition to the punishment imposed, to be assessed and charged twice the amount of the tax to which he would otherwise be liable.

61. (1) Where a person is convicted of such ^{Form of} an offence as is described in paragraph (b) of ^{sentences.} the last preceding section, there shall be two sentences imposed: the first in the usual form of adjudging the accused to pay the penalty imposed, and the second adjudging the accused to pay twice the amount of the tax of which he has sought to evade or avoid the payment.

(2) The first sentence shall forthwith be enforceable, but the second sentence shall not be formally recorded until the amount of the tax of which the accused has attempted to evade or avoid payment has been ascertained by the Collector, who shall, as soon as practicable, proceed to ascertain and fix the same.

(3) The Collector shall give notice to the accused of the amount so ascertained, and if the accused within fourteen days after such notice, or within such further time as the Collector or the Court may for good cause allow, gives the Collector notice of objection to such amount, he shall be entitled to have such objection heard and determined by the Court.

(4) At any time after such amount has been ascertained by the Collector, or, upon the accused's objection, by the Court, the second sentence may be formally recorded, adjudging the accused to pay twice the amount so ascertained or determined, and shall be forthwith enforceable.

Authent-
ication and
service of
documents.

62. (1) Every form, notice, demand or other document issued or given by or on behalf of the Collector or other officer under this Proclamation shall be sufficiently authenticated if the name of the Collector or officer by whom the same is issued or given is stamped or printed thereon.

(2) Any notice required or authorised under this Proclamation to be served upon any person shall be sufficiently and effectively served—

- (a) if personally served upon him; or
- (b) if left at his usual or last place of abode or office or place of business in the Territory; or
- (c) if sent in a registered letter addressed to such place of abode, office or place of business, or to his usual or last known postal address in the Territory;

and, in the case of a company, shall be sufficiently and effectively served if personally served on the public officer of the company or delivered to him or left at the company's address for service under this Proclamation, or, if the company has lodged no address for service as required by this Proclamation, then if the notice is left at or sent in a registered letter by the post addressed to any office of the company in the Territory or any premises therein where it carries on business.

Tax
assessable
without
deduction
for United
Kingdom
tax.

63. For the purposes of income tax payable under this or any subsequent Proclamation income shall be assessable without any deduction for income tax (including supertax) payable in the United Kingdom.

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

Relief in respect of income tax paid in the United Kingdom.

(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 purposes of this section the expression "rate of tax", when applied to income tax paid or payable in the Territory, means the rate determined by dividing the amount of the income 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 in the Territory has been charged for that year, except that where the income tax paid or payable in the Territory is charged on an amount other than the ascertained amount of the actual profits the rate of tax shall be determined by the Collector.

(4) Every claim for relief under this section shall be made to the Collector within two years of the date of the assessment to which the claim relates or within such further time as the Collector may for good cause allow.

65. The High Commissioner may make regulations not inconsistent with the provisions of this Proclamation for all or any of the following purposes, that is to say:—

Regulations.

(a) prescribing the duties of all persons engaged or employed in the administration of this Proclamation;

- (b) defining the limits of areas within which such persons are to act;
- (c) prescribing the forms of returns to be furnished to the Collector and by whom the same shall be made and the time and mode of making and furnishing the same;
- (d) providing that, to avoid duplicate payment in the Territory in any case in respect of the same year or period, the Collector may make such allowance or refund as he shall deem just and in such manner as may be prescribed;
- (e) prescribing the procedure to be observed in the conduct and hearing of objections and appeals before the Court;

and generally for giving effect to the objects and purposes of this Proclamation. The regulations may prescribe penalties to which any person convicted of any contravention thereof or failure to comply therewith shall be liable, not exceeding a fine of twenty pounds or, in default of payment, imprisonment with or without hard labour for a period not exceeding three months.

Interpre-
tation of
terms.

66. In this Proclamation, unless inconsis-
tent with the context—

“agent” includes any partnership, com-
pany, or any other body of persons,
whether incorporated or not, which is
acting as an agent;

“company” includes any association in-
corporated or registered under any law
in force in the Territory relating to
companies, banking companies or
insurance companies, or under a
special law; and further includes any
such association which, though incor-
porated or registered outside the Terri-
tory, carries on business or has an
office or place of business therein;

“person” includes any partnership, any
company, and any body of persons
whether incorporated or not;

“prescribed” means prescribed by or under
the authority of this Proclamation,
and, in the case of a prescribed form,
means a form substantially as pre-
scribed or to the effect thereof;

“regulation” means a regulation lawfully
made and in force under this Procla-
mation;

“tax” or “taxation” means any tax or
duty leviable under this or any subse-
quent Proclamation;

“ taxpayer ” means any person chargeable with any tax or duty leviable under this or any subsequent Proclamation, and, for the purposes of any provision relating to any return, includes every person required by this Proclamation to furnish such return;

“ trustee ”, in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of Court, or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct *fidei commissum* or other limited interest, or acting in any fiduciary capacity, or having, either in a private or an official capacity, the possession, direction, control or management of any property of any person under legal disability;

“ this Proclamation ” includes the regulations;

“ year of assessment ” means any period in respect of which any tax or duty leviable under this or any subsequent Proclamation is chargeable.

67. The Proclamations mentioned in the Schedule to this Proclamation are hereby repealed: ^{Repeal of laws.} Provided that notwithstanding such repeal any tax which would have been leviable under any such Proclamation and which has not been collected at the commencement of this Proclamation may be collected in accordance with and subject to the provisions of such repealed Proclamation.

68. This Proclamation may be cited as the ^{Short title and commencement.} Bechuanaland Protectorate Income Tax (Consolidation) Proclamation, 1940, and shall have force and take effect as from the first day of July, 1939.

GOD SAVE THE KING.

Given under my Hand and Seal at Cape Town this Tenth day of February, One thousand Nine hundred and Forty.

E. J. HARDING,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

SCHEDULE.

LAWS REPEALED.

No. and Year of Law.	Title or Subject of Law.
Proclamation No. 70 of 1922	Bechuanaland Protectorate Income Tax Proclamation, 1922.
Proclamation No. 25 of 1924	Bechuanaland Protectorate Income Tax Amendment Proclamation, 1924.
Proclamation No. 25 of 1926	Bechuanaland Protectorate Income Tax Amendment Proclamation, 1926.
Proclamation No. 39 of 1929	Bechuanaland Protectorate Income Tax Proclamation, 1929.
Proclamation No. 34 of 1930	Bechuanaland Protectorate Income Tax Proclamation, 1930.
Proclamation No. 49 of 1932	Bechuanaland Protectorate Income Tax Proclamation, 1932.
Proclamation No. 37 of 1934	Bechuanaland Protectorate Income Tax Proclamation, 1934.
Proclamation No. 49 of 1934	Bechuanaland Protectorate Income Tax Amendment Proclamation, 1934.
Proclamation No. 54 of 1935	Bechuanaland Protectorate Income Tax Proclamation, 1935.
Proclamation No. 57 of 1936	Bechuanaland Protectorate Income Tax Proclamation, 1936.
Proclamation No. 52 of 1937	Bechuanaland Protectorate Income Tax Proclamation, 1937.
Proclamation No. 38 of 1938	Bechuanaland Protectorate Income Tax Proclamation, 1938.