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The
Registered Accountants' Journal

(Conducted under the auspices of the Society of Auditors, Madras.)

Edited by:
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CONTENTS

EDITORIAL

Autonomous Board.—We have urged in our columns for the constitution of an autonomous body for controlling the profession in this country. The Government have now accepted the principles and have come out with their scheme for the establishment of the autonomous body, which is published in extenso elsewhere in this issue. We welcome this steady improvement in the outlook of the Government, but we have to point out that the scheme as set out by the Government contains many features which are not welcome to the profession. The number of elected representatives has been fixed at 13 while the number of nominees by the Government and various other commercial bodies have been fixed at 12 thus leaving a bare majority for the elected members. Having recognised the principles of autonomy, we fail to see, what purpose these nominees of Government are meant to serve. The profession would probably not object to the inclusion of 2 or 3 Government's nominees for the transitional period but to dump 12 nominees as against only 13 elected representatives would mean setting the whole scheme at naught. The other details of the scheme are not also in cosonance whith the spirit of autonomy. To quote an example, the Government have reserved to themselves the power to remove the names of Registered Accountants from the Register for reasons other than non payment of annual fees or at the request of the Registered Accountant concerned. We fail to see the reason for this provision, as the Government have also retained the power to dispose of all appeals from aggrieved persons. The Autonomous Board should be left to deal with this aspect also as it is a purely domestic issue affecting the integrity of the profession. Before finalising their Scheme the Government should constitute a sub committee of the Accountancy Board to redraft their proposals.

Opinion of the Society of Auditors, Madras on the proposed amendments to the Indian Companies Act.

The opinions received from various members of the Society were considered and in reply to the letter addressed to the President of the Society, he is requested to reply the Government embodying the opinion on clause 8 and 11 of the Bill given below :—

Clause 8 of the Bill :

The Board of Directors function as a body and the responsibility is in the nature of joint responsibility. As long as the Directors act in good faith and their bonafides are not in question, the democratic principle of the majority decision prevails. The difference, if any, among the Directors in these circumstances will be only one of opinion.

If the proposed amendment is intended to serve the interest of the shareholders, it can well be achieved without it. As it is, a dissenting Director is not precluded from placing his views at the General Body Meeting and if his reasons are convincing the shareholders in general meeting may even now take such action as they consider best in the interest of the Company. But given as a statutory right, the proposed amendment will do considerable damage, especially in the hands of unscrupulous directors. It may not be conducive to efficient management of the affairs of the Company. On the other hand it may tend to promote unhealthy developments among the directors and ultimately result in their lack of enthusiasm and interest in the business and thus spoil the reputation of the business.

The copies of the recorded proceedings of the general meeting under the signature of the chairman may be sent to the shareholders within 30 days of the date of the general meeting, thus affording an opportunity to the absentee shareholders to form a correct view of the affairs of the Company as a criticism of the dissenting Director if any. Such a provision will more than fulfill the object of the proposed amendment.

The shareholders of industrial or other concerns in South India are generally suspicious of the management. Those that have attended Company meetings will agree that the level of discussion at general meetings is invariably very low. The dissenting director's report may hamper the proceedings of the meeting and engender critical situations and perhaps litigation. Obviously unless the stage is reached when the shareholders as a body raise themselves to a higher level of considering matters dissassionately and take decisions which will go to promote the interest of the Company, the remedy proposed will be worse than the disease.

Clause 11 of the Bill:

Apparently the amendment has been proposed without a correct appreciation of the position of the auditor vis a vis the Company. The auditor is the agent of the shareholders and he discharges his function without fear or favour. The responsibility attached to the Office is so great that an auditor cannot at all afford to take risks, as the non-disclosure of material facts if any prejudicially affecting the interest of the shareholders may find him in [illegible]

The materials placed and the information given by the management form the structure of the auditor's report. They are all there and the shareholders in general meeting may apply to the management for elucidation of points requiring elucidation and the auditor by his presence at the meeting may not be able to add anything usefully to the report already made. The assumption that the report of the auditor is not complete or conclusive without its being augmented by a personal explanation which presupposes a certain amount of reserve on the part of the auditor when furnishing the report and that the provision is intended to draw it out of him, is manifestly unfair and unjust.

A shareholder is entitled to act on the strength of the report of the auditor and the auditor is answerable for any mis-statement of facts or other irregularities which may be discovered at a later date.

The provision will present difficulties in practical working also. A person having large Company work will hardly find it possible to attend the meetings as it is probable he may be required to attend two or more meetings at one and the same time. Companies distributed all over the Province or Country cannot be reached easily on account of the distance and it may not be physically possible to attend the meeting at two distant places convened for the same day, not to mention of cases where on account of ill health or otherwise an auditor is not able to attend the meeting at all. The Companies in effect will be obliged to consult the auditor before fixing the date of the meeting if his presence at the meeting is rendered obligatory. But in going so far as that there is really no purpose and the disadvantages more than outweigh the advantages if any.

The cost of travelling is also an item to be considered and it will be an unfair burden on the Company and there is hardly any justification for incurring the expenditure as nothing useful will come out of it.

Even to-day the fees sanctioned at the general meeting of the Company to the auditor are very poor. Should the auditor's attendance at the general meeting be insisted upon, he may have to spend out of his pocket moneys for attending the meeting apart from the loss of time involved by such attendance. The businessman of the day and the investing public do not have a correct appreciation of the value of time and work of the Registered Accountants so much so the proposed step will be detrimental to the interest of the profession generally.

Government of India

DEPARTMENT OF COMMERCE

Memorandum

The Indian Companies Act of 1913 was intended to ensure the regular and proper audit of the accounts of companies and Section 144 of the Act deals with the appointment and qualifications of auditors. The said section, as it stood before 1930, empowered the Local Governments to grant certificates to persons entitling them to act as auditors of public companies and to make rules providing for the grant of such certificates and it also conferred power on the Governor General in Council to declare that the members of specified institutions or associations should be entitled to be appointed and act as auditors of companies throughout British India.

2. Since these arrangements were not intended to be more than temporary, a bill was introduced in the Legislature in 1930 and passed by it which transferred the power to grant auditor's certificates and to make rules for the grant of auditor's certificates from the Local Governments to the Governor General in Council, and provided for the appointment of an Indian Accountancy Board to advise him on all matters relating to the grant of auditor's certificates and to assist him in maintaining the standards of qualifications and conduct required of auditors.

3. The existing arrangements are however transitional and are intended to pave the way for advance towards the ideal system of an autonomous association of accountants able to assume responsibility for the maintenance of the requisite standard of professional qualifications, discipline and conduct of its members, subject to the supervision of Government.

4. The object of bringing into being such an autonomous asssociation of accountants has been under the active consideration of the Government of India for some time and after careful consideration they feel that the stage has now come for the profession to assume the responsibilities vested in the Government. To carry out that object and also to maintain the highest possible standards in the profession, the Government of India have prepared the following tentative scheme regarding the constitution and functions of the proposed autonomous body.

The Board will consist of 25 members —13 elected and 12 nominated. The 13 members will be elected from the following 6 constituencies:—

	No. of Members
1. Registered Accountants of the Province of Madras and the Indian States of Hyderabad, Mysore, Travancore and Cochin.	3
2. Registered Accountants of the Province of Bombay and the Western Indian States.	4
3. Registered Accountants of Bengal and Assam.	3
4. Registered Accountants of the U.P., Bihar, the C.P. and Berar and Orissa.	1
5. Registered Accountants of the Punjab and the North-West Frontier Province	1
6. Registered Accountants of Sind, Delhi, Ajmer-Merwara and the Rajputana States.	1

The 12 nominated members may be the following :—

2 Officers from the Central Board of Revenue not below the rank of Commissioner of Income Tax.

1 Registrar of Joint Stock Companies.

1 Accountant Member from the Income-Tax Appellate Tribunal.

1 Member to be nominated by the Associated Chamber of Commerce.

1 Member to be nominated by the Federation of the Indian Chamber of Commerce.

1 Member to be nominated by the Federation of the Muslim Chamber of Commerce.

5 Others including Government officials and Registered Accountants entitled to train articled Clerks.

The nominated members as far as possible to hold registerable qualifications.

6. At present the term of office of all members, other than those in Government service, is three years. With the transfer of control, the Board would become an executive body. To enable the body to function continuously it is proposed that one-third of the members should retire at the conclusion of the annual general meeting, or if the number is not a multiple of 3, then the number nearest one-third (but not exceeding one third) should retire from office. The members of the Board to retire at the close of the year should be those who have been longest in office since their last nomination or election but as between persons who became members on the same day those to retire should be determined by ballot.

7. *Rules to be framed under the Indian Companies Act* :—

The Auditor's Certificates Rules as they exist at presnt can remain after suitable modification.

8. The following functions which are now exercised by Government to be transferred to the autonomous Board:—

(*a*) The maintenance of a Register of Accountants entitled to apply for Auditor's Certificates.

(*b*) Fixation of qualifications for enrolment on the Register and the fees therefor.

(*c*) Examination of candidates for enrolment and prescription of the fees to be paid by the examinees.

(*d*) Collection of fees from Registered Accountants and examinees.

(*e*) Restoration to the Register of Accountants under rule 16 of the Auditor's Certificates Rules.

(*f*) Establishment, if necessary, and settling the constitution and procedure of local accountancy boards to advise the Board on any matters which may be referred to them.

The Board to have complete control over its finances except for the first three years when its budget will be submitted to Government for sanction. All the fees to be credited to the Board.

The Board to elect its own Chairman and its own Secretary.

9. It is proposed that following powers should be exercised by Government :—

(*a*) Removal of names from the Register unless the removal is at the request of the Registered Accountant concerned or for non-payment of annual fee.

(*b*) Disposal of appeal by any aggrieved person. The appeal must however be lodged within a stated period to the Central Government who after considering any representations submitted by the aggrieved party or by the Board may by order either allow the apeal or confirm the decision of the Board.

(*c*) Confirmation of any proposal by the Board involving amendment of the Rules before they become effective. The Government to publish the proposed amendments for public criticism and duly consider the objections or suggestions received before giving its assent.

(*d*) Approval of the Budget of the autonomous board by the Central Government for the first three years.

Case Law.

XII. Income-tax Appellate Tribunal V. B. P. Byramji & Co., (1946) 14-I T. R.—174.

In the above case Their Lordships of the Nagpur High Court had occasion to consider Section 34 of the Indian Income tax Act, as amended by the Act of 1939. In this case, the assessee was assessed to Supertax by virtue of the provision of section 6 (4) (v) of the Finance Act of 1939 on the basis of the rates prescribed for the year before, namely 1938. The successor in office of the assessing officer proposed to re-open the assessment on the ground of definite information that had come into his possession. It was admitted that the "definite information" consisted only of his own view of the Law as to whether the rates prescribed in the Finance Act of 1938 or 1939 was applicable and that in his view the latter act should have been applied. The question arose whether he had the right of section 34 to re-open the assessment in such a case. The Tribunal held that he could re-open the assessment, relying on C. I. T. Bombay, V. D. R. Naik (1939) 7. I. T R.—362. The Court held that since the amendment of the Act in 1939, a mistake in law would not permit the re-opening of the assessment under Section 34 of the Act. See C. I. T. V Sir Mohamed Yosuf (1944) 12 I. T. R. 8 where C. I. T. V. D. R Naik *supra* was sighted but not followed. See also Raghavalu Naidu & Sons V. C I. T., Madras (1945) 13. I. T R.—194 and C I. T. V. Lakshmana Iyer (1945) 13 I. T.R.—242. The Court held that the view of the Incometax Officer was not based on any definite information coming into his possession and that he only corrected a mistaken view of the law applicable setting his own view against that of his predecessor and that in itself was not a sufficient ground for re-opening an assessment.

XIII. Nand Lal Bhoj Raj *In Re*: (1946) 14 I. T. R. 181.

The Lahore High Court held that money spent in acquiring the lease of land containing deposit of crude salt was revenue expenditure allowable under Sec. 10 (2) (xii) of the Indian Income-tax Act.

XIV. C. I. T., Madras V. V. E K. R. Savumiamurthy (1946) 14-I. T. R.—185.

The Madras High Court held that the expression "Seven Years" in Section 4-B of the Indian Income-tax Act should be taken as referring to the period of seven years of twelve calendar months each immediately preceding the commencement of the relevant previous year and not the period of seven years ending on the 31st December preceding the commencement of the year.

XV. Income-tax Appellate Tribunal, Bombay V. Chhaganmal Mangilal—(1946) 14—I. T.R. 206.

It was held that the expenditure incurred by the assessee in defending a suit filed against him for infringement of a trade mark was not in the nature of capital expenditure but was revenue expenditure and as such was an allowable deduction in computing the taxable Income of the assessee under Sec. 10 (3) (xii) of the Act.

STUDENTS' CORNER

Principles of Auditing with Special Reference to Joint Stock Banks.

(T. K. MENON B.A., G.D.A., R.A.)

(*Continued from page 42*).

Fixed Capital Expenditure—Land and Buildings.

The Auditor should examine the title deeds to the land. He must ascertain that they refer to the property in question and that the property is duly conveyed to the Bank If the property has been mortgaged, the Auditor should obtain a certificate from the Mortgagee to that effect. The value of the land should appear in the Balance Sheet at cost.

The cost of the buildings and Furniture should be verified from the Ledger and the Auditor should see that a fair rate of depreciation is written off.

Bills receivable.—The Auditor should examine all the Bills in hand and verify the total of such Bills with the Ledger Account. He must also note the due dates of the Bills and see that proper provision is made for rebate representing the portion of the discount not earned at the date of the Balance Sheet.

Book Debts.—Loans fully secured. The verification of loans on security involves not only an examination of the Loan Accounts in the Ledger, but also of the security lodged in order that the Auditor can satisfy himself that the loan is properly secured and that there is a reasonable margin between the amount of the loan and the value of the security. The Auditor should see that interest is charged up and received from the customer on the due dates. If the interest is in arrear, it will indicate that the Account is doubtful and if additional security is not furnished to cover the accumulated interest, the Auditor should see that adequate reserves are made to cover any possible loss.

In the case of loans on mortgage of lands, the Auditor should examine the mortgage deeds, the title deeds and the encumbrance certificates relating to each property and he should satisfy himself that the amount of such loan does not exceed the value as shown by the Bank's Valuer's certificates.

In the case of loans on the security of Gold Ornaments, the Auditor should examine a large number of items selected by him and he must get a certificate from the Manager that the amount advanced on each item does not exceed the market value and that there is a sufficient margin to cover the interest accruing. If the jewels are repledged in some other bank, a certificate should be obtained from the latter Bank showing the total amount outstanding at date of the Balance Sheet. The Auditor should also satisfy himself that the amount for which they are repledged is less than the amount advanced by the Bank. In this connection it is important to note that the interest of pawnee of an article is limited to the amount advanced by him on the same.

Loans on the security of stocks and shares should be verified by the Auditor by actually inspecting the certificates deposited by the borrower. The Auditor should require all such securities to be produced to him at the same time to prevent the substitution of one security for another or the production of the same security for two loans. If the securities deposited are to Bearer, the transfer of title is complete by delivery. But in the case of registered or inscribed stocks or

shares the Auditor should see that they have been transferred to the Bank. For all practical purposes, in the case of registered stocks or shares, it is enough if the Auditor sees that the Share certificate is deposited, accompanied by a Blank transfer signed by the transferor (the borrower) and leaving the name of the transferee and the date of execution blank. This will give a good equitable security to the Bank upon such shares. I shall deal with the different classes of Shares and stocks later when we come to the verification of the Bank's own investments. In verifying the loans on the security of shares and stocks the Auditor should test the value of the securities from market quotations or by making enquiries. The chief point for attention is whether the market value leaves sufficient margin.

Loans on the security of produce or goods should be verified by testing the value of the goods from market quotations, invoices or other reliable sources of information. If the goods are not deposited with the Bank, but are in transit, the rail receipt or the Bill of Lading and Insurance policy should be deposited with the Bank and the Auditor should see that such documents of title are duly endorsed in favour of the Bank.

Loans on personal guarantees should be verified by inspecting the guarantors are good.

Loans on the security of Life Insurance Policies are to be verified by noting that there is a sufficient margin between the surrender values of the policies and the amounts advanced. The Auditor should require a statement from the Insurance Company showing the surrender values of the policies. The deed of assignment should be examined to see that it is duly made out in favour of the Bank. The last premium receipt should be seen by the Auditor and he must also ascertain that due notices of assignments have been given to the Insurance Companies.

Loans on Pronotes should be verified by examining the Pronotes and noting that they are not time-barred In the case of pronotes which are considered to be good the Auditor should ask for a certificate from the Bank Manager that the debts due on the pronotes are good and recoverable.

(*Will continue*)

NOTIFICATIONS

Government of India.

Income-tax.

New Delhi, the 22nd February, 1947.

No. 5—The Central Government is pleased to direct that the following amendment shall be made in the List appended to the Notification of the Government of India in the Finance Department (Revenue Division), No. 34-Income tax, dated the 23rd November, 1946, namely:—

In the said list under the sub-head "Institutions" for entries Nos. 10 to 12, the following entries shall be substituted respectively, namely:—

"10. Indian Agricultural Research Institute, New Delhi.

11. Indian Dairy Research Institute, Bangalore.

12. Indian Veterinary Research Institute, Izatnagar and Mukteswar (United Provinces)."

Central Board of Revenue.

Income-tax.

New Delhi, the 26th April, 1947.

No. 8—In exercise of the powers conferred by sub-section (1) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the following further amendment shall be made in the Indian Income-tax Rules, 1922, the same having been previously published as required by sub-section (4) of the said section, namely:—

For rule 22 of the said Rules the following rule shall be substituted, namely:—

"22. An appeal under section 33 shall be in the following form:—

Form of an appeal to the Tribunal.

In the (Income-tax) Appellate Tribunal, Bombay.

No. of 19 19

Appellant versus Respondent

The province of assessment.	
Assessment year and in the case of an assessment under Section 34 of the Indian Income-tax Act, 1922, the year in which the Income should have been assessed.	
Income-tax Officer passing the original order.	
Section of the Indian Income-tax Act, 1922, under which the Income-tax Officer passed the order.	
Appellate Assistant Commissioner determining the appeal.	
Date of communication of the order of the Appellate Assistant Commissioner.	
Address to which notices may be sent to the appellant.	
Address to which notices may be sent to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

1.

2.

3.

4.

etc.

(Signed)
(Appellant)

(Signed)
(Authorised representative, if any)

Verification.

I,......................................, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified to-day the day of 19 .

Signed ( ).

N. B.—1. The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against and two copies of the order of the Income-tax Officer.

2. The memorandum of appeal must be accompanied, in the case of an appeal by an assessee, by a fee of one hundred rupees. It is suggested that the fee may be deposited in a Government treasury and the treasury receipt annexed to the appeal.

3. The memorandum of appeal should be written in English, and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such ground should be numbered consecutively."

Finance Department.

New Delhi, the 24th April, 1947.

No F. 4 (13)-E. C. 1./46.—In exercise of the powers conferred by section 10 of the Capital Issues (Continuance of Control) Act, 1947 (XXXIV of 1947) the Central Government is pleased to direct that the powers conferred upon it by section 3, section 4 and sub-section (2) of section 6 of the said Act shall be exercisable also by the Controller of Capital Issues appointed by the Central Government or, in the absence of the Controller, by the Deputy Controller of Capital Issues so appointed, subject to the condition that any order made by the Controller or the Deputy Controller in the exercise of the aforesaid powers may on the application of any person aggrieved thereby be reviewed by the Central Government which may upon such review confirm, modify or cancel such order.

Department of Commerce.

Registration of Accountants.

New Delhi the 10th May 1947.

No. 1-A(1)/47.—In exercise of the powers conferred by sub-section (2) of section 144 of the Indian Companies Act, 1913 (VII of 1913), the Central Government is pleased to direct that the following further amendment shall be made in the Auditor's Certificates Rules 1932, the same having been previously published as required by the said sub-section, namely:—

In rule 29 of the said Rules, for the words "March or April", the words "November or December shall be substituted.

Registration of Accountants

No. 1-A (4)/46.—In exercise of the powers conferred by sub-section (2) of section 144 of the Indian Companies Act, 1913 (VII of 1913), the Central Government is pleased to direct that the following further amendments shall be made in the Auditors' Certificates Rules, 1932, the same having been previously published as required by the said sub-section, namely:—

In the said Rules—

I. In rule 21, for clause (*b*) the following clause shall be substituted, namely—

"(*b*) has passed the All-India Diploma in Commerce Examination held by the All-India Board of Technical Studies in Commerce and Business Administration, with Auditing as a special subject, or."

II. In rule 34, for the words "group or groups" the words "paper or papers" shall be substituted.

III. In rule 36—

(1) Sub-clause (*v*) of clause (*a*) shall be re-numbered as sub-clause (*vi*), and before sub-clause (*vi*) as so re-numbered, the following sub-clause shall be inserted, namely :—

" (*v*) In the case of a person who has passed the All-India Diploma in Commerce and Examination held by the All-India Board of Technical Studies in Commerce and Business Administration, with Auditing as a special subject....................4 years."

(2) sub-clause (*iv*) of clause (*b*) shall be re-numbered as sub-clause (*v*) and before sub clause (*v*) as so re-numbered, the following sub-clause shall be inserted, namely.

"(*iv*) in the case of a person referred to in sub-clause (*v*) of clause (*a*)..................8 years.
(3) in clause (c) for the words, brackets and figures ' or sub-clause (*iii*) " the words-brackets and figures " subclause (*iii*) or sub-clause (*iv*)" shall be substituted.

(4) in clause (5) of the proviso, for the words, brackets and figures " sub-clauses (*iv*) and (*v*) " the words, brackets and figures " sub-clause (*iv*), (*v*) and (*vi*) " shall be substituted.

IV. In clause (2) of the proviso to Rule 41, for the words " the All-India Senior Diploma in Commerce Examination held by the All-India Board of Commercial Studies, Delhi, with Auditing as a special subject, or ", the following shall be substituted, namely :—

" the All-India Diploma in Commerce Examination held by the All-India Board of Technical Studies in Commerce and Business Administration, with Auditing as a special subject, or ".

(Y. N. SUKTHANKAR),
Secretary to the Government of India.

Department of Commerce

Simla, the 21st April 1947.

SIR,

I am directed to say that it has been brought to the notice of the Government of India that certain Registered Accountants use the words "under the Indian Companies Act" after the words "Registered Accountant/s". The Indian Accountancy Board considered the matter at the meetings held in February and October 1946 and expressed the view that no qualifying words, such as those referred to above, should be used after the words "Registered Accountants".

2. The Government of India have carefully considered the above recommendation of the Board. They find that the said words do not state the position correctly inasmuch as the registration takes place under the Auditor's Certificates Rules, 1932, and not under the Indian Companies Act, 1913. It would be cumbrcus to state the position in some detail as the rules themselves derive from the Indian Companies Act. They have therefore come to the conclusion that the use of those words should be dropped. I am therefore to request that in future every Registered Accountant and every firm of Registered Accountants should avoid the use of any qualifying words before or after the words "Registered Accountant/s" in their letter heads, sign boards, professional documents etc.

I have the honour to be,
Sir,
Your most obedient servant,
(*Sd.*) P. N BHANDARI,
Under Secretary to the Government of India.

LEGISLATIVE ENACTMENTS ACT No. XX OF 1947

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April 1947.

Whereas it is expedient to discontinue the duty on salt manufactured in, or imported into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue, subject to certain modifications, for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to continue the temporary export duty on raw cotton and the enhanced rates of export duties on raw jute and jute manufactures, to enhance the

export duty on tea, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Finance Act, 1947.

(2) It extends to the whole of British India.

2. For the year beginning on the 1st day of April 1947, duty shall be levied on salt manufactured in, or imported by sea or by land into, British India.

3. For the year beginning on the 1st day of April 1947, the Schedule contained in the First Schedue to the Indian Finance Act, 1945, shall again be inserted in the Indian Post Office Act 1898, as the First Schedule to that Act.

• • • •

6. (1) Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginnin, on the 1st day of April 1947—

(*a*) income-tax shall be charged at the rates specified in Part I of the Schedule, and

(*b*) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act 1922, be those specified in Part II of the Schedule.

(2) In making any assessment for the year ending on the 31st day of March 1948, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Indian Income-tax Act, 1922, an amount equal to one-fifth of the earned income, if any included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March 1948,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on securities", or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusions bears to his total income;

(*b*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March 1948, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

(*i*) on that part of the earned income chargeable under the head "Salaries" to which clause (*b*) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that sub-section *Plus*,

(*ii*) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, *Plus*

(*iii*) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) In making any assessment for the year ending on the 31st day of March 1948,—

(*a*) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of two annas in the rupee on that part of its total income which consists of such inclusion ;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in the any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

(6) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3), (4) and (5) of this section

(7) For the purposes of making any deductions of income-tax in the year beginning on the 1st day of April 1947, under sub-section (2) or sub-section (2B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the income tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees.

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian-Income-tax Act, 1922, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act.

7. To sub-section (2) of section 10 of the Indian Finance Act, 1942, the following proviso shall be addod, namely :—

"Provided that if it is subsequently found that the sum so repaid was excessive, the excess repayment shall be recoverable, and the provisions of law referred to in sub-section (4) of section 2 of the Excess Profits Tax Ordinance, 1943, shall apply to the payment and recovery of the amount of the excess repayment as if that amount were a deposit required to be made under that section, but notwithstanding the provisions of sub-section (7) of section 46 of the Indian Income-tax Act, 1922, as applied by the said sub-section (4), such recovery may be made at any time."

The Schedule

(See section 6)

PART I

Rates of Income-tax

A.—In the case of every individual, Hindu undivided family, un-registered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate
1. On the first Rs. 1,500 of total income	... *Nil.*
2. On the next Rs. 3,500 of total income	... One anna in the rupee.
3. On the next Rs. 5,000 of total income	... Two annas in the rupee.
4. On the next Rs. 5,000 of total income	... Three and a half annas in the rupee.
5. On the Balance of total income	... Five annas in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,500 ;

(ii) the income-tax payable shall in no case exceed half the amount by which, the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,500.

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,500 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified,—whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	... Five annas in the rupee.

PART II

Rates of Super-tax

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this Part applies—

	Rate, if income wholly earned	Rate, if income wholly unearned
1. On the first Rs. 25,000 of total income.	*Nil.*	*Nil.*
2. On the next Rs. 5,000 of total income.	Two annas in the rupee.	Three annas in the rupee.
3. On the next Rs. 5,000 of total income.	Two and a half annas in the rupee.	Three and a half annas in the rupee.
4. On the next Rs. 10,000 of total income.	Three annas in the rupee.	Four annas in the rupee.
5. On the next Rs. 10,000 of total income.	Four annas in the rupee.	Five annas in the rupee.
6. On the next Rs. 10,000 of total income.	Five annas in the rupee.	Six annas in the rupee.
7. On the next Rs. 10,000 of total income.	Six annas in the rupee.	Seven annas in the rupee.
8. On the next Rs. 15,000 of total income.	Seven annas in the rupee.	Eight annas in the rupee.
9. On the next Rs. 15,000 of total income.	Eight annas in the rupee.	Nine annas in the rupee.
10. On the next Rs. 15,000 of total income.	Nine annas in the rupee.	Ten annas in the rupee.
11. On the next Rs. 30,000 of total income.	Ten annas in the rupee.	Ten and a half annas in the rupee.
12. On the balance of total income	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

B.—In the case of every local authority—

	Rate
On the whole of total income ...	... Two annas in the rupee.

C.—In the case of the association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies—

	Rate
(1) On the first Rs. 25,000 of total income	... *Nil.*
(2) On the balance of total income	... Two annas in the rupee.

D.—In the case of every company—

	Rate
On the whole of total income	... Two annas in the rupee.

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March 1948, on the amount by which such Part—

	Rate
(a) exceeds 30 per cent., but does not exceed 40 per cent., of the total income as so reduced ...	Three annas in the rupee.
(b) exceeds 40 per cent., but does not exceed 50 per cent., of the total income as so reduced ...	Five annas in the rupee.
(c) exceeds 50 per cent. of the total income as so reduced ..	Seven annas in the rupee.

Provided that—

(i) no additional super-tax shall be payable where such part is less than, or equal to five per cent. on the capital of the company;

(ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company;

(iii) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, or a subsidiary company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation.—For the purposes of this paragraph.—

(a) the expression "capital of the company" shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March 1948 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943;

(b) the expression "dividend" shall be deemed to include any distribution included in the expression as defined in clause (6A) of section 2 of the Indian Income tax Act, 1922, and any such distribution made during the year ending on the 31st day of March 1948 shall be deemed to have been made in respect of the whole or part of the previous year;

(c) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

Act No. XXI of 1947

An Act to impose a special tax on a certain class of income

WHEREAS it is expedient to impose a special tax on income arising from business;

It is hereby enacted as follows:—

1 (1) This Act may be called the Business Profits Tax Act, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

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

(1) "abatement" means, in respect of any chargeable accounting period, a sum which bears to a sum equal to—

(a) in the case of a company, not being a company deemed for the purposes of section 9 to be a firm, six per cent. of the capital of the company on the first day of the said period computed in accordance with Schedule II, or one lakh of rupees, whichever is greater, or

(b) in the case of a firm having—

(i) not more than two working partners, one lakh of rupees, or
(ii) three working partners, one and a half lakhs of rupees, or
(iii) four or more working partners, two lakhs of rupees, or
(c) in the case of a Hindu undivided family two lakhs of rupees, or

(d) in any other case, one lakh of rupees, —the same proportion as the said period bears to the period of one year;

(2) "accounting period" in relation to any business means any period which is or has been determined as the previous year for that business for the purposes of the Indian Income tax Act, 1922;

(3) "business includes any trade, commerce or manufacture, or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation the profits of which are chargeable according to the provisions of section 10 of the Indian Income-tax Act, 1922:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(4) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1947;

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term.

(5) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act:

(6) "control of a company" means control direct or indirect of more than one-half of the voting power attached to the total issued paid-up share capital of the company, or control vested by its Memorandum and Articles of Association otherwise than by reference to such voting power:

Provided that the voting power attached to shares held by a nominee or trustee for any person shall be deemed for the purpose of this definition to be held by that person;

(7) "deficiency of profits" means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the abatement in respect of that period;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the abatement in respect of that period;

(8) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

(i) is a manager of the company or concerned in the management of the business, and

(ii) is remunerated out of the funds of the business, and

(iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;

(9) "dividend" has the same meaning as in section 2 of the Indian Income-tax Act, 1922;

(10) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932;

(11) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

(12) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

(13) "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

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

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

(16) "profits" means profits as determined in accordance with Schedule I;

(17) "taxable profits" means the amount by which the profits during a chargeable accounting period exceed the abatement in respect of that period;

(18) "working partner" of a firm means a partner thereof who is required by the terms of the contract of partnership to devote substantially the whole of his time to the business of the firm.

3. (1) Every Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer shall have the like powers under this Act and in relation to the same area and cases as he exercises under the Indian Income-tax Act, 1922.

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner of Income-tax in the exercise of his appellate functions.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as 'business profits tax') which shall be equal to sixteen and two-thirds per cent. of the taxable profits:

Provided that—

(a) any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax,

(b) all profits from any business of life insurance,

(c) any sum paid to a business by or through the Central Government by way of bonus or subsidy,—shall be totally exempt from business profits tax under this Act.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of subclause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section:

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India, unless the business is controlled in India:

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within an Indian State unless such income, profits or gains or received or deemed under the provisions of the aforesaid Act to be received in or are brought into British India in any chargeable accounting period, or are assessable under section 42 of that Act.

6. Where a deficiency of profits occurs in any chargeable accounting period in any business, the taxable profits of the business shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:—

(a) the aggregate amount of the taxable profits for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and

the amount of business profits tax payable in respect thereof shall be deemed to be reduced accordingly, and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

(b) where the amount of the deficiency of profits exceeds the aggregate amount of the taxable profits for the previous chargeable accounting periods or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any taxable profits for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profit, any taxable profits for the next subsequent chargeable accounting period and so on.

7. As from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of this Act to have been discontinued and a new business to have been commenced:

Provided that where a change takes place in the persons carrying on a business and where except for such change relief would be allowable under section 6, the Central Board of Revenue may, if it thinks fit, allow such relief under that section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business before the change remain interested therein after the change.

8. (1) Where any interest, annuity, or other annual payment, or any royalty or rent, is payable by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, and the recipient company is resident outside British India no allowance shall be made in respect of such payment in computing the profits or losses of the paying company.

(2) Where—

(a) a company (hereinafter referred to as "the principal") is resident in British India and is not a subsidiary of any other company resident in British India; and

(b) during the whole or any part of any chargeable accounting period of the principal, another company resident or carrying on business within British India (hereinafter referred to as "the subsidiary") is a subsidiary of the principal,

the capital or profits or losses of the subsidiary for such chargeable accounting period or part thereof shall be treated for the purposes of this Act as if they were the capital of, or as the case may be, profits or losses arising from the business of, the principal:

Provided that the profits of the subsidiary so treated shall not be exempted from business profits tax in the hands of the principal by reason of any exemption applicable to the principal under the proviso to section 4.

(3) Where the chargeable accounting periods of the principal and subsidiary are co-terminous, such division and apportionment of the profits or losses of the subsidiary for any chargeable accounting period shall be made as will allocate the due proportion thereof to the relative chargeable accounting period or periods of the principal; and such division and apportionment shall be by reference to the proportion that the number of days of the chargeable accounting period of the subsidiary falling within the relative chargeable accounting period or periods of the principal bears to the total number of days in the chargeable accounting period of the subsidiary.

(4) For the purposes of this section a company shall be deemed to be a subsidiary of another company if and so long as not less than four-fifths of its ordinary share capital is beneficially owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company of or other companies.

(5) The business profits tax payable by virtue of this section by the principal shall, for the purposes of section 10, be allocated by the Income-tax Officer to the respective companies concerned in such proportion as in his opinion is just:

Provided that the principal shall have the same rights of appeal against an order of allocation made under this sub-section as it has under this Act [illegible] amount of [illegible]iness profits tax assessment.

9. Where an indidvidual is entitled to p[illegible] arising from more than one busin[illegible] which at least one is carried on by a firm in which he [illegible] a partner, the Income-tax Officer ma[illegible] the

prior sanction of the Inspecting Assistant Commissioner of Income-tax, aggregate the shares of such individual in the profits or losses of all of such businesses and treat the sum of such aggregation as the profits of a business carried on by such individual and assess him accordingly:

Provided that if the accounting periods of such businesses are not co-terminous, the Income-tax Officer shall determine in respect of such individual his chargeable accounting period and shall make such divisions, apportionments and aggregation of the shares of such individual in the profits or losses of the several business as may be necessary to determine for such chargeable accounting period the total profits and gains of such individual therefrom:

Provided further that for the purpose of this section, a company, which is neither one in which the public are substantially interested, as defined in the *Explanation* to subsection (*1*) of section 23 A of the Indian Income-tax Act, 1922, nor a subsidiary company as defined in sub-section (*4*) of section 8 of this Act, shall be deemed to be a firm in which the persons having an interest in the company are partners, or, in the case of a sole-shareholder, a business carried on by that sole-shareholder, and the profits of such company shall be computed accordingly:

Provided further that any profits or losses so aggregated for assessment upon an individual shall be excluded from the profits or losses of the respective businesses for the purposes of this Act; and no assessment under this Act shall be made in respect of any such business save in the names of the other partners therein,

10. The amount of the business profits tax payable by any person for any chargeable accounting period shall, in computing total income for the purposes of the relevant income-tax of super-tax assessment, be allowed as a deduction:

Provided that where, under the provisions of this Act relating to deficiencies of profits relief is given by way of repayment from business profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) in which the deficiency of profits occurs,

11. (*1*) The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business or the amount of deficiency, if any, available for relief under section 6:

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

(*2*) The Income-tax Officer may serve on any person, upon whom a notice has been served under sub-section (*1*), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require,

12. (*1*) The Income-tax Officer shall, by an order in writing after considering such evidence if any, as he has required under section 11, assess to the best of his judgment the profits liable to business profits tax and the amount of business profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of business profits tax, if any repayable, and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Business profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on, or treated as carrying on, the business in that period.

(3) Where [illegible] were carrying on the business jointly in the chargeable accounting peri[illegible] assessment shall [illegible]de upon them jointly and, in the case of a partnership, may be made [illegible] partnership name.

[illegible] Where by virtue of the foregoing pro[illegible]sions an assessment could; but for his death, have b[illegible]n made on any person either solely or joint[illegible] with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

13. (*1*) The Income-tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 12, may, at any time after the expiry of the period specified in the notice issued under subsection (*1*) of section 11 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the taxable profits and the amount of business profits tax payable thereon.

(2) Before making such provisional assessment the Income-tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (2) make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee:

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Income-tax Officer shall make allowance for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 6 to be set off against the taxable profits of the chargeable accounting period in respect of which the assessment is being made:

Provided that, where such deficiencies of profits have not been determined under sub-section (1) of section 12, the Income-tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 12, determine the amount of business profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by provisional assessment.

(7) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee, together with interest at two *per cent. per annum* calculated from the date of the order of refund, both days inclusive.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 11, and may procced to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act, shall so far as may be, apply as if the notice were a notice issued under that section.

15. If the Income-tax Officer, the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (*1*) of section 11, or to produce or cause to be produced the accounts or documents or other evidence required by the Income-tax Officer under sub-section (2) of that section, or has concealed particulars of the profits of the business, or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty, in addition to the amount of any business profits tax payable, a sum not exceeding—

(*a*) where the person has failed to furnish the return required under sub-section (*1*) of section 11, the amount of business profits tax payable;

(*b*) in any other case, the amount of business profits tax which would have been avoided if the return made had been accepted as correct:

[illegible] under this section without [illegible] Income-tax.

16. (1) Any [illegible] profits tax for which he is liable as assessed by the Income-tax Officer [illegible] under this Act, or objecting to any penalty imposed by the [illegible] of profits as assessed by the Income-tax Officer, or to the [illegible] Officer by way of relief under any provision of this Act [illegible] to grant relief, may appeal to the Appellate Assistant Commissioner of [illegible].

(2) An appeal shall ordinarily be presented [illegible] of the notice of demand relating to the assessment or penalty objected to, or [illegible] against the assessment of a deficiency of profits, within thirty days of the [illegible] of the order determining the deficiency, or in the case of an appeal against the [illegible] or a refusal to grant relief, within forty-five days of the receipt of the intimation of the [illegible] or refusing to grant the relief, but the Appellate Assistant Commissioner of Income-tax may [illegible] an appeal after the expiration of that period if he is satisfied that the appellant had [illegible] for not presenting it within that period.

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

(4) The Appellate Assistant Commissioner of Income tax shall hear and determine the appeal and, subject to the provision of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made by the Central Board of Revenue in relation to income-tax.

17. Any Income-tax Officer or any person in respect of whose business an order under section 12 has been passed and who objects to an order passed by an Appellate Assistant Commissioner of Income-tax under section 15 or section 16 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the said Act.

18. The Commissioner of Incom-tax may, at any time within four years from the date of any order passed by any Appellate Assistant Commissioner of Income-tax or Income-tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

19. The sections of the Indian Income-tax Act, 1922, as applied to excess profits tax by virtue of section 21 of the Excess Profits Tax Act, 1940, shall, in so far as they are not repugnant to the provisions of this Act, apply to business profits tax as they apply to excess profits tax.

20. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

21. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 11, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

22. If a person makes in any return required under section 11 any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

23. (1) A person shall not be proceeded against for an offence under section 21 or section 22 except at the instance of the Inspecting Assistant Commissioner of Income-tax.

(2) No prosecution for an offence punishable under section 21 or section 22 or under the Indian Penal Code shall be instituted in respect of the same facts as these in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner of Income-tax may, either before or after the institution of proceedings, compound any offence punishable under section 21 or section 22.

24. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

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

(a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

(b) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

Schedule I

[*See Section 2 (16)*]

Rules for the computation of profits for purposes of Business Profits Tax

1. The profits of a business during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule, be computed in accordance with the provisions of section 10 of the Indian Income-tax Act 1922 :

Provided that any sums other than any interest paid by a firm to a partner of the firm excluded under the proviso to clause (*iii*) of sub-section (2) or clause (*a*) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall if paid, be included in those allowances when computing the profits of the business for the purposes of business profits tax :

Provided further—

(*a*) that any sums received or credited in a chargeable accounting period which by virtue of rule 9 of Schedule I to the Excess Profits Tax Act, 1940, have been treated as business receipts for the purpose of assessment to excess profits tax, and

(*b*) any expenditure or loss incurred in any chargeable accounting period, allowance in respect of which has been made for excess profits tax purposes,—

shall be disregarded in computing the profits or losses of the chargeable accounting period :

Provided further that where a chargeable accounting period is not an accounting period, the profits or losses of the business during the accounting periods wholly or partly included within the chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profit during the chargeable accounting period ; and any such apportionment shall be made in proportion to the number of days in the respective periods.

2. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of business profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

3. Income received from investments or other property shall be included in the profits only as provided in this rule, that is to say,—

(a) in the case of the business of a building society, or a banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property, or

(b) in the case of a business part of which consists in banking, insurance or dealing in investments or other property, not being a business to which clause (a) applies, the profits shall include all income received from investments or other property held for the purposes of that part of that business:

Provided that—

(i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on business as defined in this Act, and

(ii) income to which the persons carrying on the business are not beneficially entitled, shall in no case be included.

4. (1) In the case of a business carried on in any accounting period which constitutes or includes a chargeable accounting period, by a company, the directors whereof have throughout that accounting period a controlling interest therein, no deduction shall be made in respect of directors' remuneration in computing the profits for that accounting period.

(2) Where, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company have during any part of that accounting period a controlling interest therein, and the case is not one to which sub-rule (1) applies, the profits of the accounting period shall be computed as if the directors of the company had no controlling interest therein, and to the part thereof appropriate to the chargeable accounting period ascertained in accordance with the third proviso to rule I shall be added the directors' remuneration for that part of the chargeable accounting period during which the directors of the company had a controlling interest therein.

(3) In this rule the expression "directors' remuneration" does not include—

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than five per cent, of the ordinary share capital of the company, or

(b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of the business profits tax.

5. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Income-tax Officer considers reasonable and necessary, having regard to the requirements of the business, and, in the case of directors' fees or other payment for services, to the actual services rendered by the person concerned:

Provided that no disallowance under this rule shall be made by the Income-tax Officer, unless he has obtained the prior authority of the Inspecting Assistant Commissioner of Income-tax.

(2) Any person who is dissatisfied with the decision of the Income-tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal referred to in section 17.

SCHEDULE II

[*See Section* 2 (1)]

Rules for computing the capital of a Company for purposes of Business Profits Tax

1. For the purposes of ascertaining the abatement under this Act in respect of any chargeable period, the capital of a company shall be computed in accordance with the following rules.

2. (1) Where the company is one to which clause (a) of rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act, 1922.

(2) Where the company is one to which clause (b) of rule 3 of Schedule I applies, its capital, ascertained in accordance with sub-rule (1) of this rule shall be diminished by the cost to it of its investments or other property, the income from which is not includible in the profits so far as that cost exceeds any debt for money borrowed by it.

(3) In all other cases, the capital shall be the sum ascertained in accordance with the said sub-rule, diminished by the cost to the company of its investments so far as that cost exceeds any debt for money borrowed by it.

3. So much of the Premium realized by a company from the issue of any of its shares as is retained in the business shall be regarded as forming part of its paid-up capital for the purposes of rule 2.

4. Any deposits with the Central Government under section 10 of the Indian Finance Act 1942, or section 2 of the Excess Profits Tax Ordinance, 1943, shall not be regarded as investment or other property for the purposes of this Schedule.

G. H. SPENCE,
Secy. to the Govt. of India.

ACT No. XXII OF 1947

An Act further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax, Act, 1940.

Whereas it is expedient further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

CHAPTER I

Preliminary

1. (1) This Act may be called the Income-tax and Excess Profits Tax (Amendment) Act 1947.
(2) It shall be deemed to have come into force on the 31st day of March 1947.

CHAPTER II

Amendments of Act XI of 1922

2. In section 2 of the Indian Income-tax Act, 1922 (hereafter in this Chapter referred to as the said Act),—

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

'(4A) "capital asset" means property of any kind (other than agricultural land) held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;'

(b) for the *Explanation* to clause (6A) the following shall be substituted, namely:—

'Provided further that the expression "accumulated profits" wherever it occurs in this clause, shall not include capital gains of any previous year prior to the previous year for the assessment for the year ending on the 31st day of March 1948;'

(c) in clause (6C), after the word and figures "section 10" the words, figures and letter "and any capital gain chargeable according to the provisions of section 12B" shall be inserted;

(d) in clause (15), for the words "does not apply; and" the words "does not apply and except any capital gain which is not includible in the total income of an assessee;" shall be substituted.

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

(a) to clause (iv) the words "and any capital gains of the Fund arising from the sale exchange or transfer of such securities" shall be added;

(b) in clause (vii), after the words "Any receipts" the words, figures and letter "not being capital gains chargeable according to the provisions of section 12B and" shall be inserted.

4. To clause (c) of section 4A of the said Act, the words 'account not being taken in either case of income chargeable under the head "Capital gain" shall be added.

5. To section 6 of the said Act the following clause shall be added, namely:—
"(vi) Capital gains".

6. After section 12A of the said Act the following section shall be inserted, namely:—
'12B. (1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March 1946; and such profits and gains shall be deemed to be income of the previous year in which the sale exchange or transfer took place:

Provided that where the amount of capital gains in the previous year does not exceed fifteend thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income:

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, Exchange or transfer of a capital asset, being property the income of which is chargeable under section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income:

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section be treated as sale, exchange or transfer of the capital assets:

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in British India and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely:—

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

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

Provided further that where the capital asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or dminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section:

Provided further that where the capital asset became the property of the assessee before the 1st day of January 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount or depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10:

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

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the third proviso to sub-section (1) its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with the following provisions of this subsection, that is to say,—

(a) if the amount of the capital gain is greater than the cost of the new asset,—

(i) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(ii) for the purposes of computing in respect of the new asset any allowance under clause (vi) or clause (vii) of sub section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be *nil*, or

(b) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(i) the capital gain shall not be charged under this section, and

(ii) for the purposes of computing in respect of the new asset any allowance under the said clause (vi) or any allowance or adjustment under the said clause (vii) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in the sub-section, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

7. In clause (c) of sub-section (2) of section 14 of the said Act, after the words "are assessable under" the words, figures and letter "section 12B or" shall be inserted.

8. To section 17 of the said Act the following sub-sections shall be added, namely:—

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

(i) income-tax and super-tax payable on his total in come as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*

(ii) income-tax on the whole amount of such inclusion at the following rates, namely:—

where such amount—	Rate.
exceeds Rs. 15,000 but does not exceed Rs. 50,000 ...	One anna in the rupee,
exceeds Rs 50,000 but does not exceed Rs. 2,00 000 ...	Two annas in the rupee,
exceeds Rs. 2,00, 000 but does not exceed Rs 5,00,000 ...	Three annas in the rupee,
exceeds Re. 5,00,000 but does not exceed Rs. 10,00,000 ...	Four annas in the rupee,
exceeds Rs. 10,00,000 ...	Five annas in the rupee,

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(a) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*

(b) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head "Capital gains", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.'

9. To section 18A of the said Act the following sub-section shall be added, namely:—

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

10. In section 24 of the said Act, after sub-section (2) the following sub-sections shall be inserted, namely:—

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

(2B) Where an assessee sustains a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.'

11. To section 38 of the said Act the following clause shall be added, namely:—

"(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

12. In section 42 of the said Act,—

(a) for the marginal heading the following shall be substituted, namely:—

"Income deemed to accrue or arise within British India";

(b) in sub-section (1), after the words "in cash or in kind," the words "or through or from the sale, exchange or transfer of a capital asset in British India," shall be inserted.

13. To section 43 of the said Act the following *Explanation* shall be added, namely:—
"*Explanation.*—A person, whether residing in or out of British India, who acquires, after the 28th day of February 1947, whether by sale, exchange or transfer, a capital asset in British India

from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India.'

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

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

CHAPTER III

Amendments of Act XV of 1940

16. In section 15 of the Excess Profits Tax Act (hereafter in this Chapter referred to as the said Act), the words "within five years of the end of the chargeable accounting period in question" shall be omitted, and shall be deemed always to have been omitted.

17. After section 26 of the said Act the following section shall be inserted, namely:—

"26A. (1) If on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

(i) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, in connection with that business,—

(a) expenditure on the removal of works constructed for protection against enemy attack;

(b) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;

(c) where any physical assets held for the purposes of the business were altered to adapt them to war conditions, expenditure on re-adapting them to normal requirements;

(d) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war; or

(ii) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, a loss on the sale of trading stock held on the 31st day of March, 1946 for the purposes of the business; or

(iii) incurred in any accounting period ending on or before the 31st day of March 1946 in connection with that business any expenditure referred to in the sub-clause (i) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period:—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require:

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate:

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in sub-clauses (a), (b) and (c) of clause (i) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable:

Provided further that, where any change has taken place in the persons carrying on the business the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (*b*) and (*c*) of clause (*i*) as the persons previously carrying on the business would have had if there had been no such change.

(*2*) Where an accounting period included, but did not end on, the 31st day of March 1946, all expenditure referred to in the sub-clauses of clause (*i*) of sub-section (*1*) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (*1*) as if it were incurred after that day, and if an application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (*1*).

(*3*) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change."

18. To the first paragraph of rule 11 of Schedule I to the said Act the following proviso shall be added, namely:—

" Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period; and any relief accuring from such deduction shall be given by repayment or otherwise, as the case may require."

Act No. XXIII of 1947

An Act further to amend the Reserve Bank of India Act, 1934

WHEREAS it is expedient further to amend the Reserve Bank of India Act, 1934, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Reserve Bank of India (Second Amendment) Act, 1947.

2. In section 2 of the Reserve Bank of India Act, 1934 (hereinafter referred to as the said Act), after clause (*b*) the following clause shall be inserted, namely:—

'(*bb*) "foreign exchange" has the same meaning as in the Foreign Exchange Regulation Act, 1947;'

3. In section 17 of the said Act,—

(*a*) to sub-clause (*a*) of clause (*11*) the words "or foreign exchange" shall be added;

(*b*) to clause (*12*) the words "and foreign exchange" shall be added;

(*c*) after clause (*12*) the following clause shall be inserted, namely:—

"(*12A*) the purchase and sale of securities issued by the Government of any country outside India and expressed to be payable in a foreign currency, being in the case of purchase by the Bank, securities maturing within a period of ten years from the date of purchase";

(*d*) for clause (*13*) the following clause shall be substituted, namely:

"(*13*) the opening of an account with or the making of an agency agreement with, and the acting as agent or correspondent of, a bank incorporated in any country outside India or the principal currency authority of any country under the law for the time being in force in that country or any international formed by such principal currency authorities, and the investing of the funds of the Bank in the shares of any such international bank;".

4. For sections 40 and 41 of the said act, the following section shall be substituted, namely:—

'40. The Bank shall sell to or buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras, foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund:

Provided that no person shall be entitled to demand to buy or sell foreign exchange of a value less than two lakhs of rupees.

Explanation.—In this section "authorised person means a person who is entitled by or under Foreign Exchange Regulation Act, 1947, to buy, or as the case may be, sell, the foreign exchange to which his demand relates.

Act No. XXIX of 1947

An Act to provide for the continuance of control over issues of capital

WHEREAS it is expedient to provide for the continuance of control over issues of capital;

It is hereby enacted as follows:—

1. (*1*) This Act may be called the Capital Issues (Continuance of Control) Act, 1947.

(*2*) It extends to the whole of British India, and applies also to British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

(*3*) It shall cease to have effect on the first day of April, 1950.

2. In this Act —

(*a*) "issue of capital" means the issuing of any securities whether for cash or otherwise;

(*b*) "securities" means any of the following instruments issued, or to be issued, by or for the benefit of a company, whether incorporated in British India or not, namely:—

(*i*) shares, stock and bonds;

(*ii*) debentures;

(*iii*) other instruments creating a charge or lien on the assets of the company; and

(*iv*) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.

3. (*1*) No company incorporated in British India shall, except with the consent of the Central Government, make an issue of capital outside British India.

(*2*) No company, whether incorporated in British India or not, shall except with the consent of the Central Government,—

(*a*) make an issue of capital in British India;

(*b*) make in British India any public offer of securities for sale;

(*c*) renew or postpone the date of maturity or repayment of any security maturing for payment in British India.

(*3*) The Central Government may on application make an order according recognition to an issue of capital made or to be made outside British India by a company not incorporated in British India.

(*4*) The Central Government may qualify any consent or recognition accorded by it under sub-section (*2*) or sub-section (*3*) with such conditions, whether for immediate or future fulfilment, as it may think fit to impose; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

(5) Where an application for the consent or recognition of the Central Government under any of the provisions of this section is refused, the Central Government shall, upon the request of the applicant, communicate to him in writing the reasons for such refusal.

4. No person shall issue in British India any prospectus or other document offering for subscription or publicly offering for sale any securities which does not include a statement that the consent or recognition as the case may be, of the Central Government has been obtained to the issue or offer of the securities, and no person shall without the consent of the Central Government issue in British India any document publicly offering for sale any security issued with the consent or recognition of the Central Government if such issue was made by a private company or if the order according its consent or recognition contained a condition that the securities should be privately subscribed.

5. (1) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in British India or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May 1943 in British India or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

6. (1) The Central Government may, by general order which shall be notified in the official Gazette, provide for the granting of exemption from all or any of the provisions of sections 3, 4 and 5.

(2) The Central Government may by order condone a contravention of any of the provisions of section 3 or section 4, and on the making of such order the provisions of this Act, shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 3 or section 4, as the case may be.

7. Any officer authorised in this behalf by the Central Government may, for the purpose of enquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with, require any company, or any officer of a company, which has made such application or obtained such order to submit to him such accounts, books or other documents, or to furnish to him such information, as he may reasonably think necessary.

8. No person shall, when complying with any requisition under section 7 or when making any application for consent or recogniton to an issue of capital, give any information or make any statement which he knows, or has reasonable cause to believe, to be false or not true in any material particular.

9. No person who obtains any information by virtue of this Act shall, otherwise than in connection with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with the permission of the Central Government.

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged or any officer in the direction, be exercised or discharged by any officer subordinate to that Government.

11. The Central Government shall, by notification in the official Gazette, constitute an Advisory Committee consisting of not more than five members, and may from time to time refer to it for advice any such matters arising out of the administration of this Act as the Central Government may think fit.

12. The Central Government may by notification in the official Gazette make rules for carrying out the purposes of this Act.

13. (1) Whoever contravenes, or attempts to contravene, any of the provisions of this Act or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or both.

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves

that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

14. Where any person is prosecuted for contravening any of the provision of this Act or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

15. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

16. (1) All orders made or deemed to be made under the provisions of the Capital Issues (Continuance of Control) Ordinance, 1947, and in force immediately before the commencement of this Act shall continue to be in force and be deemed to be orders made under the corresponding provisions of this Act

(2) Section 6 of the General Clauses Act, 1897, shall apply upon the expiration of the said Ordinance as it had then been repealed by this Act.

Act No. XXX of 1947

An Act to provide for investigation into matters relating to taxation on income

WHEREAS it is expedient, for the purposes of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law, and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof to make provision for an investigation to be made into such matters;

It is hereby enacted as follows:—

1. (1) This Act may be called the Taxation on Income (Investigation Commission) Act, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, "taxation on income" means any tax chargeable under the Indian Income-tax Act, 1922 (XI of 1922) or the Excess Profits Tax Act, 1940 (XV of 1940).

3. The Central Government may constitute a Commission to be called the Income-tax Investigation commission (herein-after referred to as the Commission) whose duties it shall be—

(a) to investigate and report to the Central Government on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation is adequate to prevent the evasion thereof:

(b) to investigate in accordance with the provisions of this Act any case referred to it under section 5 and report thereon to the Central Government.

4. (1) The Commission shall consist of a Chairman (being a person who is or has been a Judge of a High Court) and two other Commissioners, appointed by the Central Government.

(2) On the occurrence from any cause of a vacancy among the Commissioners, the Central Government may, if it thinks fit, appoint a person to fill the vacancy.

5. (1) The Central Government may, at any time before the 31st day of December 1947, refer to the Commission for investigation and report any case in which the Central Government has *prima facie* reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief.

(2) If in the course of investigation into a case referred to it under sub-section (1) the Commission has reason to believe that some person other than the person whose case is being investigated has himself evaded payment of taxation on income, it may make a report to the Central Government stating its reasons for such belief, and on receipt of such report the Central Government may at any time refer the case of such other person to the Commission for investigation and report.

6. (1) The Commission shall have power to administer oaths and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of taking evidence on oath, enforcing the attendance of witnesses and of persons whose cases are being investigated, compelling the production of documents and issuing commissions for the examination of witnesses, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898); and any reference in the said Chapter to the presiding officer of a Court shall be deemed to include a reference to the Chairman of the Commission.

(2) If in the course of any investigation under this Act it appears to the Commission to be necessary to examine any accounts or documents which it cannot itself examine, the Commission may authorise any person qualified in its opinion to make such examination to examine the accounts or documents and interrogate for that purpose any person having charge or custody thereof and make a report thereon to the Commission; and any person having charge or custody of such documents shall be bound to produce them to the person so authorised and to give to such person any information in respect thereof which the person so authorised may require.

(3) The Commissioners and all persons authorised by the Commission under this section shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

7. (1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of sittings and deciding whether to sit in public or in (private) and may act notwithstanding a vacancy in the number of the Commissioner.

(2) In making an investigation under clause (b) of section 3, the Commission shall act in accordance with the principles of natural justice. shall follow as far as practicable the principles of the Indian Evidence Act, 1872 (I of 1872), and shall give the person whose case is being investigated a reasonable opportunity of rebutting any evidence adduced against him.

(3) Any person whose case is being investigated the Commission may be represented by a pleader duly authorised to act on his behalf.

(4) Except with the previous sanction of the Central Government.—

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any civil or criminal court for any evidence given by him in any proceedings before the Commission, and

(b) no evidence so given shall be admissible in evidence against such person in any suit, prosecution, or other proceeding before such Court.

(5) No document shall be inadmissible in evidence in any proceedings before the Commission on the ground that it is not duly stamped or registered.

(6) Nothing in section 5 of the Indian Income-tax Act, 1922 (XI of 1922) or in that section as applied to excess profits tax by section 21 of the Excess Profits Tax Act, 1940 (XV of 1940) shall apply to the disclosure of any of the particulars referred to therein in any proceeding before the Commission or in any report made by the Commission to the Central Government or in any report made to the Commission by a person authorised under sub-section (2) of section 6.

8. (1) After considering any report made to it under clause (b) of section 3, the Central Government may, by order in writing, direct that proceedings to assess in respect of the income of any period commencing after the 31st day of December 1938 the person to whose case the report relates to income-tax, super-tax, or excess profits tax shall be taken or reopened; and upon such a direction being made, such assessment proceedings may be taken and completed under the appropriate law, notwithstanding anything contained in section 34 of the Indian Income-tax Act, 1922 (XI of 1922), or section 15 of the Excess Profits Tax Act, 1940 (XV of 1940), or any other law, and notwithstanding any lapse of time.

(2) On a direction being made under sub-section (1), a copy of the report of the Commission, so far as it relates to the case of the person concerned, shall be furnished to him.

(3) Notwithstanding anything to the contrary contained in any other law, in any proceedings directed to be taken under sub-section (1), any evidence in the case adduced before the Commission or a person authorised by it under sub-section (2) of section 6 shall be admissible in evidence.

9. No act or proceeding of the Commission or any person authorised by it under sub-section (2) of section 6 shall be called in question in any manner by any Court, and no suit, prosecution or other legal proceeding shall lie against the Crown or any Commissioner or any other person for anything in good faith done or intended to be done under this Act.

10. The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
