Government of Madras.

SECRETARIAT LIBRARY.

Class. IX. E. No. 135.

Ch. S. V. I. 5,000—17-10-24.

COMMONWEALTH OF AUSTRALIA.

GEORGE V, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.*

TO *Our Trusty and Well-beloved* WILLIAM WARREN KERR, *C.B.E.*, JOHN JOSEPH GARVAN, JOHN JOLLY, JOHN GIBSON FAIRLEIGH, WILLIAM THOMAS MISSINGHAM, JOHN THOMSON, STEPHEN MILLS, *C.M.G.*

GREETING :

KNOW YE *that We do by these Our Letters Patent, issued in Our name by Our Governor-General of Our Commonwealth of Australia, acting with the advice of Our Federal Executive Council, and in pursuance of the Constitution of Our said Commonwealth, the Royal Commissions Act* 1902–1912, *and all other powers him thereunto enabling, appoint you to be Commissioners to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—*

1. *The equitable distribution of the burdens of taxation ;*
2. *The harmonization of Commonwealth and State taxation ;*
3. *The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions ; and*
4. *The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals.*

AND WE APPOINT YOU, *the said* WILLIAM WARREN KERR, *C.B.E., to be Chairman.* AND WE REQUIRE *you to report as soon as possible to Our Governor-General in and over Our said Commonwealth the result of your inquiries into the matters intrusted to you by these Our Letters Patent.*

(SEAL.)

WITNESS *Our Right Trusty and Well-beloved* SIR RONALD CRAUFURD-MUNRO FERGUSON, *a Member of Our Most Honorable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Our Governor-General and Commander-in-Chief in and over Our Commonwealth of Australia, this tenth day of September in the year of Our Lord One thousand nine hundred and twenty and in the eleventh year of Our reign.*

R. C. M. FERGUSON,
Governor-General.

By His Excellency's Command,
W. M. HUGHES,
Prime Minister.

Entered on record by me, in Register of Patents, No. 25, page 11, this twenty-fourth day of September, One thousand nine hundred and twenty.

COMMISSION.

GEORGE V., *by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, and Emperor of India.*

TO *Our Trusty and Well-beloved* WILLIAM WARREN KERR, *C.B.E*, JOHN JOSEPH GARVAN, JOHN JOLLY, JOHN GIBSON FARLEIGH, WILLIAM THOMAS MISSINGHAM, JOHN THOMSON, *and* STEPHEN MILLS, *C.M.G., and* MAURICE BOYCE DUFFY.

GREETING:

WHEREAS *it is expedient in the public interest that full and careful inquiry should be made into the incidence of taxation, and into and upon any amendments which are necessary or desirable, with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest and particularly to—*

1. *The equitable distribution of the burdens of taxation.*
2. *The harmonization of Commonwealth and State taxation.*
3. *The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions; and*
4. *The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals.*

NOW THEREFORE KNOW YE *that We, reposing especial trust in your zeal, knowledge, learning, industry, discretion, and ability, do by these presents, by and with the advice of Our Executive Council of Our State of Queensland, constitute and appoint you, the said* WILLIAM WARREN KERR, JOHN JOSEPH GARVAN, JOHN JOLLY, JOHN GIBSON FARLEIGH, WILLIAM THOMAS MISSINGHAM, JOHN THOMSON, STEPHEN MILLS, *and* MAURICE BOYCE DUFFY, *to be Our Commissioners for the purpose of inquiring into the matters hereinbefore mentioned: AND We do hereby require and enjoin you to make diligent inquiry into the matters aforesaid, and for that purpose to exercise all the powers conferred upon a Commission by "The Official Inquiries Evidence Act of 1910": AND We do furthermore command and enjoin you to summon before you and to examine all such persons as may appear to you able to inform you concerning the premises, and to cause to be taken down and reduced in writing the evidence of the several witnesses that may appear before you, and such evidence, together with a full and faithful report touching the matters aforesaid, to transmit to the Honorable the Premier and Chief Secretary of Our said State: AND We do hereby appoint you, the said* WILLIAM WARREN KERR, *to be Chairman of this Our said Commission.*

IN TESTIMONY WHEREOF, *We have caused the Public Seal of Our said State to be hereunto affixed.*

WITNESS *Our Right Trusty and Well-beloved Counsellor* SIR MATTHEW NATHAN, *Major on the Retired List of Our corps of Royal Engineers, having the brevet rank of Lieutenant-Colonel in Our Army, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Governor of Our State of Queensland and its Dependencies, in the Commonwealth of Australia, at Government House, Brisbane, this eighteenth day of March, in the year of Our Lord One thousand nine hundred and twenty-one, and in the eleventh year of Our reign.*

(SEAL.)

MATTHEW NATHAN.

By His Excellency's Command,
EDWARD G. THEODORE.

Entered on record by me in the Register of Patents, No. 15, page 13, this eighteenth day of March, A.D., One thousand nine hundred and twenty-one.

P. J. M. McDERMOTT,
Under Secretary, Chief Secretary's Department.

ROYAL COMMISSION.

GEORGE V., *by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.*

TO *Our Trusty and Well-beloved* WILLIAM WARREN KERR, *C.B.E*, JOHN JOLLY, JOHN GIBSON FARLEIGH, WILLIAM THOMAS MISSINGHAM, JOHN THOMSON, STEPHEN MILLS, *C.M.G., and* MAURICE BOYCE DUFFY.

GREETING:

WHEREAS *it is expedient in the public interest that full and careful inquiry should be made into the incidence of taxation, and into and upon any amendments which are necessary or desirable, with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest and particularly to—*

1. *The equitable distribution of the burdens of taxation.*
2. *The harmonization of Commonwealth and State taxation.*
3. *The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions; and*
4. *The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals.*

NOW THEREFORE KNOW YE *that We, reposing especial trust in your zeal, knowledge, learning, industry, discretion, and ability, do, by these presents, by and with the advice of Our Executive Council of Our State of Tasmania, constitute and appoint you, the said* WILLIAM WARREN KERR, JOHN JOLLY, JOHN GIBSON FARLEIGH, WILLIAM THOMAS MISSINGHAM, JOHN THOMSON, STEPHEN MILLS, *and* MAURICE BOYCE DUFFY, *to be Our Commissioners for the purpose of inquiring into the matters hereinbefore mentioned: AND We do hereby require and enjoin you to make diligent inquiry into the matters aforesaid, and for that purpose to exercise all the powers conferred upon a Commission by law: AND We do furthermore command and enjoin you to summon before you and to examine all such persons as may appear to you able to inform you concerning the premises, and to cause to be taken down and reduced in writing the evidence of the several witnesses that may appear before you, and such evidence, together with a full and faithful report touching the matters aforesaid, to transmit to the Honorable the Premier and Chief Secretary of Our said State: AND We do hereby appoint you, the said* WILLIAM WARREN KERR, *to be Chairman of this Our said Commission.*

IN TESTIMONY WHEREOF, *We have caused the Public Seal of Our said State to be hereunto affixed.*

WITNESS *Our Right Trusty and Well-beloved* SIR WILLIAM LAMOND ALLARDYCE, *Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor in and over Our said State of Tasmania and its Dependencies, in the Commonwealth of Australia, at Hobart, in Our said State, this seventh day of April, One thousand nine hundred and twenty-one in the eleventh year of Our reign.*

(SEAL.)

W. L. ALLARDYCE,
Governor.

By His Excellency's Command,
W. H. LEE,
Chief Secretary.

FIRST REPORT

OF THE

ROYAL COMMISSION ON TAXATION

TOGETHER WITH APPENDICES.

CONTENTS

	Page
Royal Commission—Letters Patent	i-ix
Introduction	3
The giving to Primary Producers of special consideration	4
Taxation of Profits on the Sale of Mining Leases	25
Reservation	38
Bonus Shares	28
„ „ Reservation	39
Board of Appeal under the Income Tax Act	29
Double Income Tax	31
Reservation	40
Taxation of Lessees' Estate in Crown Leaseholds	34
The General Exemption and Allowances for Children under Income Tax Act	34
Reservation	40
Reservation	45

Appendices—

No. 1. List of Witnesses and Associations	iii
No. 2. Questionnaire	x
No. 3. Concessional Allowances under the Income Tax Acts of the Commonwealth and States	xv

COMMONWEALTH OF AUSTRALIA.

FIRST REPORT OF THE COMMISSIONERS.

INTRODUCTION.

To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY:

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

(1) The equitable distribution of the burdens of taxation;
(2) The harmonization of Commonwealth and State taxation;
(3) The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions; and
(4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour to report as follows:—

2. Mr. John Joseph Garvan, originally appointed on the Commission, resigned, as he found himself unable to act. Before the Commission commenced its work, Mr. Maurice Boyce Duffy was appointed a member.

3. Upon our appointment we took the earliest opportunity of assembling in Melbourne to make the necessary preliminary arrangements for the investigation, and we held our first meeting on the 27th October, 1920, and the first public sitting to take evidence, at Melbourne, on the 8th November, 1920.

4. With a view to the establishment of closer relationship between the Commonwealth and the State authorities in connexion with the investigation, the Prime Minister made certain representations to the State Governments, as a result of which Royal Letters Patent, in terms similar to those of the Commonwealth Letters Patent, were issued to members of the Commission by the Governors of Queensland, Western Australia, and Tasmania.

5. In view of the terms of reference to the Commission, which necessarily involved consideration not only of Commonwealth but also of State taxation, the Commission soon after its appointment wrote to the Premiers of the several States, asking that facilities be given for carrying out the inquiry, and particularly that State officers whose duties placed them in a position to afford information on the subject of taxation should be instructed to render assistance in any form desired by the Commission, including the appearance of selected officers as witnesses. Favorable replies were received from all the Premiers, and the Commission was afforded the fullest facilities for conducting its investigation.

6. At all times during our investigation, the fullest opportunity has been given to witnesses throughout the Commonwealth of placing before us their views on taxation. Evidence was taken in all the capital cities of Australia, and up to the present date we have held in all 118 public sittings, and have examined 191 witnesses.

7. In detail the public sittings for examination of witnesses, and the number of witnesses examined were:—

	Sittings.	Witnesses.
Melbourne	43	61
Sydney	24	47
Brisbane	13	22
Adelaide	10	20
Perth and Kalgoorlie	15	26
Hobart	13	15

8. In order that as wide a representation of views as possible should be secured, members of Parliament (both Commonwealth and State) and a large number of representative associations were invited to nominate witnesses. At the commencement of our investigation witnesses were somewhat unprepared to give evidence, owing to short notice, and the intricacies of the subject, but there was later no lack of evidence offering. In order to facilitate the giving of evidence in as clear and concise a manner as possible, witnesses were requested to submit their evidence-in-chief in writing, and in the majority of cases this was done. In many instances the evidence submitted revealed careful preparation and collaboration, and its manner of presentation was appreciated by the Commission.

9. A complete list of witnesses representative, official, and individual—appears as Appendix I.

In addition to the oral evidence, we have received and given full consideration to a large volume of correspondence and official memoranda relating to the subject of our investigations.

10. Early in our inquiry a Questionnaire was prepared for submission to the Commissioners and Deputy Commissioners of Taxation. The Questionnaire (a copy of which forms Appendix No. 2 to this Report) will give some indication of the wide scope of the inquiry.

In the present Report we have dealt with the following subjects only, viz. :—

(1) The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions.
(2) Taxation of profits on the sale of mining leases.
(3) Bonus shares.
(4) Board of Appeal under the Income Tax Act.
(5) Double Income Tax.
(6) Taxation of lessees' interests in Crown leaseholds.
(7) The General Exemption and Allowance for Children.

11. We have had many conferences in respect of these subjects, and our recommendations thereon have been arrived at only after careful examination of the evidence and consideration of the principles which, in our opinion, should govern decisions.

12. The terms of our reference embrace many other subjects of great importance, which will be dealt with in a later Report.

SECTION I.

"THE GIVING TO PRIMARY PRODUCERS OF SPECIAL CONSIDERATION AS REGARDS THE ASSESSMENT OF INCOME TAX, PARTICULARLY IN RELATION TO LOSSES RESULTING FROM ADVERSE WEATHER CONDITIONS."

13. In its inquiry into this subject the Commission has been assisted by the very full and carefully prepared evidence of a large number of witnesses, who, approaching it from various points of view, gave copious illustrations of the harsh and inequitable incidence of the present system: probably no matter has been more exhaustively dealt with. This may be traceable in some measure to the prominence given to it by frequent Parliamentary references and by the debate in the House of Representatives on 22nd April, 1920, when the following resolution was carried :—

> "This House is of opinion that the fairest method of calculation for purposes of the Federal Income Tax as applied to primary producers would be upon a basis of five years' operations;"

but, in greater measure, probably to the urgency of the question as it relates to primary producers as well as other taxpayers, and the widespread cry for amelioration of a tax which is felt to fall with undue weight on certain important sections of the people. In considering the "giving to primary producers of special consideration as regards assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions" one cannot exclude a large number of taxpayers engaged in other pursuits, who also suffer, perhaps less severely but not less frequently, irregular and recurring reverses due to circumstances over which they have no control. Though not in the language used in the official reference, its underlying conception may be deemed an invitation to consider the question not only as it relates to the primary producer but as it affects other classes of the community. To inquire what "*special* consideration" should be given to one class presupposes some knowledge of the general consideration extended to other classes.

Existing Conditions.

14. The conditions as they now exist are too well known to need elaborate statement. The primary industries of the country, including amongst others those of the grazier, farmer, dairyman, vigneron, orchardist, and miner, are the principal sources of the country's wealth, and are exposed to violent seasonal and weather changes from which indoor industries are largely protected.

Droughts—occasionally stretching with rigorous sway over an area, almost co-extensive with the pastoral and agricultural areas of the continent, oftener confined to less extensive fields—recur at irregular and frequent intervals from causes beyond prediction and beyond control, and hold the land and the fate of its occupants for long periods in a paralyzing grip. Nature, variable in mood, visits other scenes at other times with devastating floods and pestilences, before which are swept the hard-earned savings of years of toil and thrift.

15. These vicissitudes of fortune are not only more extreme and difficult to forecast than the changes which mark manufacturing industries; but unlike the manufacturer, who when faced with a declining demand can more or less completely meet the situation by restricting output and reducing his manufacturing expenses, the primary producer has to encounter, not diminished income only, but increased expenses involved in removing his stock, seeking fresh pastures, and purchasing fodder to maintain, if possible, the remnant of a herd or flock, and he is sometimes so reduced as to be dependent on public funds or State aid for seed wheat or other forms of assistance, with which to begin the struggle anew when nature is more benign.

Evidence Submitted.

16. In support of the general evidence that impoverished years recur with frequency there were placed before the Commission, by primary producers and their representatives, actual cases which clearly exhibit the added hardship imposed by the present system of taxation, in which each year is treated as a watertight compartment cut off from its neighbours on either side, and subjected to taxation up to the full limit of its earning, irrespective of what has occurred in the earlier years. The Commission also obtained particulars of a large number of actual cases from pastoral and agricultural finance institutions and other sources, and had under examination also 50 cases prepared by the Federal Taxation Authorities from taxpayers' original returns, so that they had in all under scrutiny from 130 to 150 actual cases founded on dependable records, in addition to a number of hypothetical cases which were submitted by various witnesses. Only a few of these can be cited here as examples in order to compare their treatment with that which would be meted out in the case of a person of steady income who throughout a corresponding period had received the same aggregate income. These examples may be introduced with an extract from the evidence of a witness representing the Federated Graziers' Association of Australia who said :—

> An example is, however, given illustrating the *actual experience of a grazier* in a large way, which will show what the actual result has been in seven years' operations.

	£ s. d.	£ s. d.
1st year—Profit	24,015 8 1	
2nd ,, ,, ...	28,804 14 8	
3rd ,, Loss	..	.. 34,645 19 0
4th ,, ,, ...	..	.. 67,255 2 8
5th ,, Profit	4,162 12 9	
6th ,, ,, ...	55,531 4 8	
7th ,, ,, ...	45,835 0 0	

The net result of the seven years' operations is a profit of £56,447 18s. 6d., or an average of £8,063 19s. 9d. per annum. The assets at stake in the business varied in value from £300,000 to £450,000 . . . In the example I have just quoted to you, it has been shown that the net result of seven years' operations was a profit of £56,447.

Taking the result of the sixth and seventh years, which showed profits of £55,531 4s. 8d. and £45,835 respectively, the unfortunate earner of this income finds that in those two years alone his Federal Income Tax on those profits amounts to £38,246 16s. 2d. and the State (New South Wales) Income Tax to £6,961 15s. 2d., that is £45,208 11s. 4d. in all.

17. The contrast between the treatment of such a taxpayer and that of a person deriving during the same period a steady income of equal volume from personal exertion is seen in the following table :—

—	Grazier's Income.		Grazier's Federal Tax.	City Man's Income.	City Man's Federal Tax.
	Income.	Loss.			
	£ s. d.	£ s. d.	£ s. d.	£	£ s. d.
1st year	24,015 8 1	..	8,704 0 2	8,064	1,899 18 1
2nd ,, ...	28,804 14 8	..	10,747 4 10	8,064	1,899 18 1
3rd ,, ...	..	34,645 19 0	..	8,064	1,899 18 1
4th ,, ...	..	67,255 2 8	..	8,064	1,899 18 1
5th ,, ...	4,162 12 9	..	550 16 6	8,064	1,899 18 1
6th ,, ...	55,531 4 8	..	22,147 10 11	8,064	1,899 18 1
7th ,, ...	45,835 0 0	..	18,011 12 0	8,064	1,899 18 1
Profits	158,349 0 2	101,901 1 8			
Less Losses	101,901 1 8				
Net Profit	56,447 18 6	..	60,161 4 5	56,448	13,299 6 7

18. The figures of the grazier's income in the above table are those of an actual case, as supplied by the witness. The tax is in each instance worked out at the rates at present chargeable.

19. **The primary producer referred to in the table, taxed to the full extent in the profitable years without any set-off in respect of the years of loss, would be called upon to pay a total tax for the period amounting to £60,161 4s. 5d., which is £3,713 5s. 11d. more than the total net profit derived by him from the whole seven years' operations, so that not only is his labour of those years spent for that which is nought, but the result is less than nought, because, as shown in the above table, the Federal tax amounts to more than the taxpayer has made. The State tax accentuates this taxpayer's misfortune by requiring a further payment, and he had also to pay both Federal and State Land Taxes.**

20. Our Federal system of taxation provides for steeply graduated rates. On the higher incomes, exceeding £7,600, the rate on the final £1 reaches a fraction over 8s. 6d. In the above example, Federal Income Tax on the steady income of £8,064 per annum is computed at the average rate of 53.5447 pence per £, but **the tax on the primary producers' fluctuating irregular income of similar aggregate amount works out to 255.8 pence per £, more than 4½ times (4.5236) the other, that is, not only does the Federal Income Tax take every penny of the income, but over and above the 20s. it demands in respect of each £ of the income a further 15.8 pence, which further claim can be paid only by depleting the capital employed, in this case to the extent of £3,713 5s. 11d.**

21. The same witness submitted, however, a less extreme, but hypothetical, case, and in his evidence said :—

> To illustrate how unjust the present method of taxing graziers on each year's income is, a comparative statement is submitted herewith between the income and taxation of a grazier and, let us say, a city business man. The income of each for five years is the same, viz. :—£4,802. The city man is assumed to earn £960 for each of four years and £962 for the fifth year—a total income for five years of £4,802—a state of affairs which is normally usual in city business. The grazier's normal experience is, however, *assumed* to be, as on the average usual, as follows :—

1st year's	income	£5,796 ..	
2nd „	loss	.. ..	£3,800
3rd „	income	896 ..	
4th „	income	6,700	
5th „	loss	..	4,790
	Net income for five years	.. ..	4,802
		£13,392	£13,392

The following statement shows the tax both Federal and State (New South Wales) payable by each :—

—	Pastoralist's Income.	Federal Tax.	N.S.W. State Tax.	City Man's Income.	City Man's Taxes.
		£ s. d.	£ s. d.	£	£ s. d.
1st year	5,796	970 13 11	296 8 4	960	87 19 8
2nd „	3,800 (loss)	Nil	Nil	960	87 19 8
3rd „	896	38 11 9	41 17 8	960	87 19 8
4th „	6,700	1,275 17 6	377 18 4	960	87 19 8
5th „	4,790 (loss)	Nil	Nil	962	88 4 5
	4,802	2,285 3 2	716 4 4	4,802	440 3 1
Total Taxes : Pastoralist's .. £3,001 7 6				City Man's ..	£440 3 1

> No clearer indication of the obvious and glaring injustice meted out to graziers under the Income Tax Acts is needed than the illustration mentioned.

22. Another witness, who did not appear before the Commission to urge an averaging system, gave as an illustration the fluctuating taxable income of a trader which in a series of six years showed—(1) Profit, £15,000 ; (2) Loss, £8,000 ; (3) Profit, £7,500 ; (4) Loss, £1,000 ; (5) Profit, £2,500 ; (6) Profit, £1,200, the profit aggregating £26,200 and the losses £9,000, the net result of the six years being a profit of £17,200. Under the present method and at present rates, the total Federal Income Tax payable by this trader for the period would be £6,802 0s. 6d., while if the same income of £17,200 had been received in a steady annual flow of £2,867, the tax on the income for the whole period would have amounted to only £1,681 14s. 6d. **Tax on the steady income of £2,867 is computed at the rate of 23·463 pence per £1, but the tax on the fluctuating irregular income of similar aggregate amount works out to 94.29 pence—more than four times the other—a rate far in excess of anything contemplated as payable on an income of this size. It is the rate chargeable on an income of £45,711, that is, on an average income of £2,867 he is called to pay a rate of tax which is that applicable to an income of £45,711.**

These examples exhibit a state of affairs which cannot be regarded with complacence, and even if they stood alone as special and peculiar, they call for some remedial measure. But they are unfortunately typical of a large number. The total taxpayers who are primary

producers cannot be ascertained from the latest Departmental statistics available, but they number probably 100,000. The first of these three examples is admittedly an extreme case, but it "is an actual case." A system under which such a result is even possible is faulty in both conception and incidence.

23. *Incidence on Individuals.*—That the public conscience has only now been aroused to action may be because, viewing the primary industries in the mass, the position does not appear as serious as these figures indicate, but it should not be forgotten that a severe and lengthy drought, extending over the whole of the continent is a less frequent visitor than droughts more limited in extent but equally acute within the area of their operation. Consequently the aggregate income from the whole industry throughout Australia may not in one year show such difference from another as these examples illustrate, and the observer who considers the mass and neglects the individual may form misleading impressions as to the unvarying success of persons engaged in the primary industries. Income tax is not, however, paid by an industry as a whole or by the mass of persons engaged in it, but by each person individually, and, though owing to the extent of the country, graziers in one district may be enjoying a bountiful season while those in another are undergoing severe hardships, each and all are more or less exposed at one time or another to extreme fluctuations of income.

24. *Representative Cases.*—That the study of the question might not be unduly coloured by exceptional and peculiarly serious cases, the Federal Taxation Authorities were asked to prepare and submit a schedule covering fifty cases, taken at random, of the returns of primary producers, and to set out in full detail (omitting names) the income and relative tax for each of five consecutive years, and also the tax which would have been payable had a system of averaging been in use, In the preparing of this statement it was for purpose of averaging assumed that the five-yearly period under review was a complete cycle, and had been preceded by a precisely similar cycle—in this way one average was reached for each taxpayer and formed the basis of the computation of tax. The illustration is not vitiated by this assumption. The schedule, which was wide in its range, included one taxpayer who during the five years had paid a total tax of only £3 12s. 10d., and who may, therefore, be regarded as in a small way. The cases ascended through varying levels up to that of a taxpayer who in the five years had paid a tax of £22,384 5s. 1d., from which it will be seen that the schedule is fairly representative. The figures thus compiled show that these fifty taxpayers would have paid under the present system in respect of the five years, 1st July, 1915, to 30th June, 1920, a tax amounting in the aggregate to £136,187, whereas had a system of averaging of incomes over the whole period of five years been in operation, the total tax payable by these taxpayers during the period would have been £88,976, thus showing that because of the erratic character of their incomes they were subjected to a tax greater by £47,221 than would have been paid by another body of fifty persons enjoying the same aggregate income in steady annual flow. It ought further to be added that in this schedule the tax was computed on the rates which were actually operative in the respective years embraced in the period, and that in the majority of the cases there was included also income the produce of property, and for purposes of illustration such income was *not* averaged. If it had been averaged so that the operation of the two methods on the total incomes of the respective taxpayers had been exhibited, the disparity between the present method and an averaging method would be still more marked, but disregarding that factor, the figures themselves show that the tax actually paid was fully one and a half (1·53) times what would have been paid by persons enjoying a regular steady annual income of the same aggregate volume.

25. But, again, we have to be careful that in studying the mass we do not lose sight of the effect on the individual. Analysis of the fifty cases shows that in one instance the tax actually paid under the present system reached ten and a quarter (10·27) times as much as it would have been on the average income of the period (£266 15s. as compared with £25 17s.). The schedule contains three cases where on the average annual incomes of the period no tax would have been payable, but the taxpayers were actually required to pay £6 4s., £66 6s. 6d. and £103 16s. 9d. respectively.

Effect on Revenue.

26. This at once brings into relief a consideration which has never throughout the inquiry been absent from the minds of the Commissioners—the effect which any suggested remedy may have upon the revenue, and the necessity for maintaining unimpaired the definite function of taxation in supplying adequate funds for the public services. We cling tenaciously to the principle of equity enshrined in Adam Smith's canons, which have become classical both in precept and in practice :—

1. The subjects of every State ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities, *i.e.*, in proportion to the revenue which they respectively enjoy under the protection of the State.

2. The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person.
3. Every tax ought to be so levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it.
4. Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State.

We accept also the opinion of Professor Bastable—"The successful administration is the final object (of any system of Taxation), and therefore convenience or even equity may have to yield to productiveness." But do the circumstances present any need for compromise or the sacrifice of either principle? Is the ship of State in such stress that equity and other sound principles of taxation must be jettisoned to secure its safety? We do not think so. Substantial and adequate justice can be done to those of the community who are at present and have since the inception of the Federal Income Tax Act been inequitably treated through its inelasticity in not adapting itself to the severe fluctuations characteristic of the incomes of persons engaged in primary industries, and in less degree of those engaged in other callings, many of which are intimately related to and in large measure dependent upon the primary industries, and those deriving income from other sources.

SEAT OF THE EVIL.

27. The harshness of the present system is widely distributed and keenly felt, and before suggesting or considering any remedy, an effort should be made to ascertain the seat and cause of the evil, or whether there be more than one cause. After careful consideration, we have come to the conclusion that the causes are two and arise from the absence of proper provision in the Act—

(1) to ascertain in all cases the true taxable capacity of the subject; and
(2) to make equitable and adequate allowances for deficits in income when they occur in a year other than those in which compensating profits are made.

TAXABLE CAPACITY.

28. The Federal Income Tax Act embodies the principles of differentiation of sources of income and graduation of rates and, following in that respect the lead of the United Kingdom and most other countries, does not allow the losses of one year as a set-off against the gains of another. There is an obvious weakness in any Income Tax Act which arbitrarily divides time into short periods and in taxing the subject disregards entirely all the changes of fortune of the immediately preceding periods.

29. The Federal Act (as well as all the Australian State Acts) arrives at the tax to be levied upon any subject by ascertaining three factors:—

1. The income received by the subject during the immediately preceding year;
2. The source of such income, whether it be from personal exertion or the produce of property.
3. The rate of tax, which is determined by certain rules laid down in the Act, designed to graduate the rate in accordance with a scale whereby with the increase or decrease of income for the year in question the rate of tax increases or decreases.

The first and second items do not call for consideration in this connexion, but may be dealt with in the Commission's final report. The third calls now for closer scrutiny. Can it be claimed that the income of one year and one year only is the correct and only sound standard by which to judge the taxable capacity of the subject? Why not one month or one week or one decade? Custom has in Australia and in some other countries made one year the conventional period, but the fallacy of such a custom has been recognised in several European countries, and for many years in the United Kingdom, where since 1842, when what is practically the present British Act was introduced by Sir Robert Peel, the methods of ascertaining the taxable capacity of a subject have been not less than six.

1st—On the income of the immediately preceding year:—
Annual profits and gains from certain sources, such as gas-works, railways, water-works, salt-works, quarries and the like, ferries, canals, docks, markets, and fishing rights, compositions for tithes, profits of uncertain value, such as interest, discount, &c., not taxed at the source.

2nd—On the income of the year of assessment:—
Incomes from annual value of property, occupation of land, foreign securities, consols, public funds, salaries of public and certain other employees, interest, annuities and dividends on stocks and shares taxed at the source, rents, &c., from sources within the United Kingdom.

3rd: On the average income of the three preceding years:—
Annual profits and gains from any trade, profession, employment or avocation exercised within the United Kingdom—which includes the income of the ordinary trader or professional man—and all interest, annuities, and annual profits not chargeable in other ways, including income from stocks, shares or rents from any place out of the United Kingdom. Certain tithes and teinds and ecclesiastical dues and payments.

4th: On the average income of five preceding years:—
Incomes from coal, tin, lead, copper and other mines.

5th: On the average income of seven preceding years.
Incomes arising from manorial profits and other royalties.

6th: On an amount proportionate with rent paid and irrespective of the actual income of a farmer. Profits made by a farmer from grazing stock are similarly dealt with, but a person whose main business is grazing is taxable on the average income of the three preceding years.

Special rules apply to—Miscellaneous profits from lands not in occupation of the taxpayer, the profits of single ship companies and persons owning shares in them, profits from lands cultivated by the owner, and to a few other special sources of income, which are "assessed on such average or basis as appears just and equitable."

It cannot be said that one year is the "conventional period" under the British Act: More than three-fourths of the total yield of the tax is determined by averaging three or more years.

30. It has been urged that it is the established practice of accountancy and of commerce generally to deal with business affairs in twelve-monthly periods. True, traders take observations of their running and position yearly as sailors take their reckonings daily, to ascertain the speed and direction in which they are moving and their whereabouts, but a fact of much more moment and much more *apropos* to the question is that prudent men do *not* alter their course by the latest reading only. They do not regulate their standard of expenditure and style of living in accordance with the income of the immediately preceding year only. They take much more extensive views, for example: If a citizen on closing his accounts finds that for the year his operations have resulted in a loss, he does not immediately cut down his expenditure to the barest necessaries of life. He may restrict his expenditure somewhat, cut off some of the less valued luxuries, economize generally and quicken his efforts, but if the standard of living he has enjoyed is in reasonable consonance with his average income, he makes comparatively little change. If in another year his accounts show a very large profit, such as some disclosed in the examples contained in the earlier parts of this Report, he does not thereupon cause his expenditure to bound to the utmost limit of the resources of that year. In fact, the prudent citizen orders his standard of living and the scale of expenditure having regard to the income enjoyed by him over an extended period, and the same principle which dictates the standard of living that he can prudently adopt —his spending capacity—dictates also the standard by which to ascertain his taxable capacity: *i.e.*, the grade in which he should be placed as a contributor to meet the National expenditure.

31. Sir Josiah Stamp, late Assistant Secretary to the British Board of Inland Revenue, and subsequently a member of the Royal Commission on the British Income Tax, in a recently published work on the "Fundamental Principles of Taxation in the light of Modern Developments," writes:—

> "The high rate of tax is bringing the *time question* in regard to ability into prominence in other ways. *The base of the tax must be a long enough period to give a fair average indication of means—the base upon which a man's household and conditions of life are naturally laid out.*"

If it be a fact that the average prudent citizen regulates his standard of living according to the position occupied and the prosperity enjoyed during a period of years, that is, based on "a long enough period to give a fair average indication of means," should not the same standard be employed to determine his taxable capacity? Viewed purely as a question of taxation of income, is not his spending capacity the key to his taxable capacity?

32. During 1919 a representative body of American economists, lawyers and bankers, of which Professor Seligmann was chairman, appointed a Committee to conduct an investigation and inquire into the methods and working of the Excess Profits Duty of Great Britain, and for that purpose Professor Haig, of Columbia University, visited England. He closes a lengthy and informative report on the subject with the following:—

> "A second weakness is our comparatively narrow conception of the accounting period. If we are wise, we will copy the British practice (that is, the averaging system) with respect to this. The problem is as significant for income taxation as for profits

taxation, and is one which will be particularly important in the period of falling prices, upon which, apparently, we are now entering. In effect, *we decline to regard business as a continuing operation. We separate the history of a concern into arbitrary periods, and carefully insulate each period from every other period. This procedure is not in accord with the economic facts.* We should frankly recognise net loss whenever it occurs, and make whatever readjustments are necessary to equalize the total burden as between taxpayers, *not merely on the basis of each year, but for the operations on a long-time basis.* Such a recognition of losses would eliminate much of the injustice of the present situation." (NOTE.—"The present situation" referred to is the American method of determining taxable capacity by the income of the immediately preceding year only, as is now done under the Australian Acts.)

33. **Our inquiry has led us to the conclusion that harsh and inequitable incidence in the case of widely fluctuating incomes, when each year is strictly segregated from its neighbours, is inseparable from any system of Income Tax in which steep graduation is a feature, and that escape from the inequity of such a tax can best be secured by a breaking down of the wall of partition between the years, by some method of merging or averaging, which substantially mitigates—if it does not wholly remove—the cause, viz. : the unsound assumption that each year's income or loss standing alone must determine taxable capacity, whereas the circumstances require that the longest period practically possible be brought into account. When as many years and as many vicissitudes as is practically possible are brought into line through merging or averaging the annual incomes, the true taxability of the subject—that is, his taxable capacity—can be fairly determined.**

THE BRITISH SYSTEM.

34. Following the extract from his work previously quoted, Sir Josiah Stamp goes on to write :—

> "But it must not be so extensive that the time for paying a tax does not follow closely upon the period over which it has been computed."

It is by reason of the non-observance of this desideratum that many people in Britain are now calling into question the British average system, which requires tax to be paid in various instalments over differing periods up to seven years, and he points out by way of contrast that the United States "were seriously considering abandoning the previous year method for our (British) average system."

35. With respect to the British Income Tax Act, Sir Josiah Stamp adds :—

> "The truth is probably that an average more properly indicates the economic ability of well-to-do people, but that we come into conflict with another of Adam Smith's canons, that is convenience."

A comment which correctly describes the action of the British system but is not necessarily true of *every* system of averaging.

36. Under the British Act "the system of average" (says Sir Henry Primrose, late Chairman of the British Board of Inland Revenue) "is merely an incident in machinery devised for the purpose of determining a figure of income to be taxed." In that system it serves a twofold purpose :—(*a*) to determine the rate of tax which shall be payable under a scheme which at one time was purely proportional, but has gradually at the lower stages become graduated, and (*b*) to determine the "statutory income" to which such rate shall be applied.

37. For example, as instanced by Sir Josiah Stamp :—If a man in Britain had profits for 1917 of £1,000, for 1918 of £3,000, and for 1919 of £8,000, his taxable income is found by taking the third part of the aggregate and he is called upon in the year 1920 to pay on a taxable income of £4,000, and, the same process determining the rate of tax, he has to pay at the rate applicable to an income of £4,000, notwithstanding that his income for the immediately preceding year was £8,000. Suppose the order of the incomes to be reversed, and another man in Britain had profits for 1917 of £8,000, for 1918 of £3,000, and for 1919 of £1,000, his average for the three years would also be £4,000, that is, the taxable capacity—as measured by a period long enough to give a fair indication of means—is the same in both cases, and notwithstanding the fact that in the year 1919 his income was only £1,000, he would be required in Britain to pay tax in 1920 on a statutory income of £4,000 at the rate applicable to a statutory income of £4,000, though his income for the immediately preceding year was only £1,000. Both taxpayers, although the income of one for 1919 was eight times that of the other, would pay the same amount of tax in 1920.

38. **The averaging under the British system serves a double purpose : It is used—**

(*a*) **To determine the taxable capacity of the subject, and thereby ascertain the appropriate rate of tax, and**

(*b*) **To determine the "statutory income" to which such rate shall be applied,**

two questions which are severable and ought to be kept quite distinct in the minds of those framing a taxing Act. If instead of three years the illustration had been extended to five or seven years the fallacy of using the average for the dual purposes of determining both taxable capacity and statutory income becomes increasingly apparent. The outcry against the system of averaging, which has found free, though not universal, expression in Britain, arises largely from this confusion. **In our opinion, the definite and only necessary function of an averaging system is to determine the taxable capacity of the subject, and for this purpose and this alone it should enter into every Income Tax Act of which graduation is a feature. It supplies at once the standard of taxable capacity, and is a natural and immediate corrective of the inequities, which, if it be omitted, necessarily arise in the case of fluctuating incomes.**

BASIS OF LIABILITY.

39. Having determined the taxable capacity, the basis of liability should appropriately be the income of the year in which the subject contributes to the National Exchequer : that is, the basis of his contribution should be the income earned by him during the year in which the relative tax is actually paid. He should therefore pay tax in 1920 on the income earned in 1920. This was the principle observed in the first Land and Income Tax Act of New South Wales, and is still observed in the British Act, but it necessarily involves subsequent adjustment, because the basis of liability —the actual income of the year—cannot be ascertained till after its close ; meantime the tax has been collected on an estimate of income, and it has to be corrected in the light of actual facts, and adjusted ; a method which in practice does violence to the canons of economy and convenience. In their very able report on this subject the British Royal Commission of 1920 wrote :—

> 474. Uniformity of basis throughout the whole tax may be a desirable end, but it is difficult of achievement. The first point that must be remembered is that the income of the year of assessment is the existing basis in an enormous number of cases. All rents of property, all incomes that are taxed by deduction, all salaries now assessable under Schedule E bear tax on this basis. So, too, do the incomes of all the manual wage-earners assessed by way of quarterly assessment, and no other basis for them is practicable. If a uniform basis over the whole range of the tax is the aim, it would seem that the income of the year of assessment is the only basis on which uniformity could in practice be attained. But is the year of assessment basis, though perfectly suitable for rents and employments and interest, a practicable basis on which to assess trades and businesses, the profits of which may be highly variable, and in any case cannot be ascertained until the end of the year of assessment ?
>
> 475. The beauty and simplicity of a system that would charge a taxpayer for the year 8 on the profits of the year 8, and not upon a figure based on the long-expended profits of any or all the years 1 to 7—a system which moreover would charge him on that intelligible basis not in respect of some sources of his income only, but in respect of all sources however numerous and diverse in character they might be—have naturally proved very attractive to some witnesses. *—We agree with those who have described the year of assessment basis as the ideal basis.* Its desirability is, indeed, quite obvious. It would secure tax on the income at the earliest possible moment after the income had been earned and ascertained ; it would make possible smoother graduation ; it would facilitate that merging of the super-tax with the Income Tax which has been proposed to us by so many witnesses ; it would render unnecessary many provisions for adjustment of assessments which are apparently inseparable from a system under which liability to taxation is based on distant profits.
>
> 476. But there are practicable difficulties in the way of its adoption at the present time. It would involve waiting until the end of the year of assessment for the taxpayer's return of income, with consequent delay in assessing. This obstacle might be bridged over by the making of provisional assessments during the year of assessment, with subsequent adjustments, either by additional assessments or by repayment of duty when the income for that year should have been ascertained. But there would be some administrative difficulty both in getting the assessments made or adjusted in due time, and in avoiding a serious loss of revenue in the year of change. It is certain that without a system of provisional assessment and subsequent adjustment, the loss of revenue in the year in which the change was carried out would be too great to be faced, at any rate in the present circumstances.
>
> 477. We have given a good deal of care to this question, and *we have been rather reluctantly driven to abandon any intention of recommending the year of assessment basis as the basis for all purposes.* We confess it has many charms. It is not impossible that, at some future time when administrative difficulties look less forbidding and the financial position is stronger, Income Tax may yet be charged on the income of the actual year, but taking a practical view of our present task, we feel unable to recommend so great a change at the present time.

40. **With these opinions your Commissioners are in agreement, as they also are in the recommendation of the British Commission that for the reasons therein stated the income of the year preceding the year of collection should be the basis of liability.** We appreciate that "it will make the amount of profits assessed correspond closely in point of time with the amount of profits actually being made," and thus, more closely than under the British scheme which extends over one, three, five, and seven years, will the payments of tax correspond in time with the rendering of the public services, under the protection and by the aid of which the income has been acquired—not a precise correspondence but one as near as the practical necessities of economical administration and the convenience of taxpayers will permit. **We, therefore, agree with the recommendation that in most cases "the income of the year preceding that of collection should be the basis of liability," but at this point we part company. Their finding includes both "basis of liability" and "measure of taxable capacity," not apparently from purposeful blending, but because they had failed to distinguish between the two, and in our opinion the distinction, important in itself and more important in its application, should be observed and carried to its logical and practical conclusion, which will not only be "a very important step in the direction of uniformity" but will very largely—almost entirely—extinguish the causes from which springs the injustice inseparable from the Federal Income Tax as it stands.** The fallacy underlying the confusion in these distinct and separate elements in averaging was commented upon in paragraph 33 of our Report.

REMEDIES PROPOSED.

41. A number of proposals, which will be dealt with *seriatim* were advanced by witnesses some of whom had evidently given the subject but little study and did not appreciate with any clearness the gravity and difficulties of the problems involved. Some of them had apparently confined attention to their own peculiar experiences. Disregarding for the present the evidence given by witnesses who advocated the raising of the whole of the Treasurer's requirements by a tax on land values, a topic which will be dealt with in our final report, we turn to proposals which treat more particularly with incomes and were more constructive in character. As an alleviation of the high tax borne by persons with severely fluctuating incomes, there was advocated the method commonly spoken of as "**The Carrying Forward of Losses**"—that is, **if the operation of any year or years results in a loss the amount of such loss should, till absorbed, be treated as a deduction from the income of subsequent years, and tax charged on the net balance only of the income of such subsequent years at the rate applicable to such balance.**

42. This method would afford relief in all cases if the tax were calculated on a flat rate, but it is quite ineffective in curing the evils inseparable from a graduated scale of rates when applied to fluctuating incomes. After fully considering the evidence of witnesses and the claims advanced on behalf of the carrying forward of losses, we feel bound to disapprove of it for these reasons:

43. It is not general in its application, and within the limited sphere of its operations is not equitable.

The main plea put forward for this method is that it is an equitable one. Is it? If its operations be strictly confined to actual losses in total disregard of concessional deductions, it is probably as simple and effective a method as could be devised to meet variations arising solely from one cause, namely:—that the operations of the taxpayer have in a particular year left him on the wrong side of the line which separates losses from profits, but it is otherwise valueless as a protection from inequities inseparable from the taxation of fluctuating incomes, modulated on a system of graduation. Not until the taxpayer's accounts show a positive loss could he derive any benefit whatever from this method. It is consequently limited in its scope: It is applicable to a small number of cases only, and is not of that general application which should characterize the provisions of a taxing Act which requires contributions from all sorts and conditions of men whose incomes fluctuate from year to year in every conceivable manner. For instance, it affords no relief whatever to a taxpayer who

in one year has an income of	£100 and is taxed	£2	8s. 0d. and in
the next year has an income of	£1,000 and is taxed	£47	19s. 9d.
being on a total income of	£1,100 taxed at	£50	7s. 9d.

as against another taxpayer, who in the 24 months receives precisely the same amount, namely:

in one year	£550 and is taxed	£19	15s. 11d. and
in the next year	£550 and is taxed	£19	15s. 11d.
being on the same total income of	£1,100 taxed at	£39	11s. 10d.

Such cases are not exceptional. The income of almost every taxpayer fluctuates from year to year, and it is the fluctuation, so general that it might truly be called universal,

characteristic of all incomes in every year (and not merely the occasional descent in any one year into absolute loss), which causes the harsh inequalities as between taxpayer and taxpayer, of which the Commission has received so many eloquent examples.

44. Examination of the table of 50 cases supplied by the Federal Commissioner and compiled from the returns of persons engaged in the primary industries, where there is the most violent ebb and flow, shows that of the 50, there were only 21 whose operations had in any year resulted in an actual loss. In two cases the taxpayer had two losses, making the total years showing any loss only 23—that is, out of the experience of 50 persons engaged in the most hazardous classes of business embracing a period of five years each—equal to 250 years in all—on only 23 occasions was an actual loss sustained. The method of "carrying forward of losses" would, therefore, affect only 21 of the 50, and would confer a benefit in only 23 instances out of 250, a degree so minor in application that the mere statement evidences the inadequacy of the method. **It would leave entirely unredressed the injustice done to all taxpayers by reason of the fluctuations above a loss point. As will be clearly seen, the method can be applied to only a very small percentage of taxpayers, and is even to them a weak palliative, whereas there is required an unrestricted far-reaching and penetrative remedy.** It has already been shown that even amongst primary producers less than 10 per cent. of the annual statements show losses, and the percentage will be still less in the case of more steady businesses: to the remainder, numbering more than 90 per cent. of the whole, no alleviation whatever of the present unequal burden is extended. Nor is the relief equitable even in the few cases to which it can be extended. For example:—

Two taxpayers—A and B—each show a loss of (say) £3,000 in one year, consequently do not pay tax, but by this method have each a sum of £3,000 available as a set off against future profits. In the second year, A makes a profit of £7,000, and deducting the £3,000, pays on a net income of £4,000.

The Federal tax on £7,000 is	£1,455	12	11
The Federal tax on £4,000 is	511	17	6
making the carry forward of the £3,000 worth to him	£943	15	5

B—a man of smaller means and relatively more severely hit by the loss of £3,000—makes in the second year a profit of £3,500, and deducting the £3,000, pays on a net income of £500.

The Federal tax on £3,500 is	£401	4	9
The tax on £500 is	17	6	7
making the carry forward of the £3,000 worth to him	£383	18	2

Thus to the wealthier and more prosperous person there is an allowance of £943 15s. 5d., and to the less fortunate an allowance in respect of a precisely similar loss sustained in the same year of only £383 18s. 2d. Can this be called equitable?

45. The "carrying forward of losses" also introduces a radical change of method and differentiates unduly between taxpayers, in that it provides for the alteration in some cases of the yearly period (not to some other definite period, but) to one of indefinite duration, terminating only when profits overtake losses or at some other arbitrary date. That it involves a change of method would not necessarily expose it to condemnation, for it has been proved that the present Federal method is itself faulty, but the proposal is a change for the worse and not for the better. It has the demerit of substituting a variable uncertainty in that it is indefinite as to its value to the taxpayer and equally indefinite as to the duration of its operation. This will be best seen in an example:—

Two taxpayers—M. and N.—each show a loss of (say) £5,000 in one year, consequently do not pay tax, but by this method have each a sum of £5,000 available as a set-off against future profits.

In the second year M. makes a profit of £6,000 and, deducting £5,000, pays on a net income of £1,000—

the Federal tax on £6,000 is	£1,087	14	8
the tax on £1,000 is	47	19	9
making the carry forward of the £5,000 worth to him	£1,039	14	11

N. has in the second year an income of £1,000 and in the third year an income of £4,0
and not having yet retrieved the loss of £5,000, does not pay tax in either year

the fourth year a profit of £3,000 and being exempt in respect of £2,000 (the balance of the £5,000) pays tax on £1,000 only. He has consequently been relieved of tax

in the second year on £1,000, the Federal tax being	..	..	..	£47	19 9
in the third year on £2,000, ...			..	149	5 11
in the fourth year he would but for the remission have paid on an income of £3,000, the tax being	£363	18	6		
he actually pays on only £1,000	47	19	9		
thus saving in that year				255	18 9
making the carry forward of the £5,000 worth to him ..				£453	4 5

This shows that in addition to being inequitable, the carrying forward of losses in this way involves a radical change of method : It breaks down in a haphazard, irregular way the separation between year and year, and does not substitute a systematic, all-embracing, regular and sharply defined method.

46. Whatever claims are advanced for the method of "carrying forward of losses" it cannot operate more frequently than losses occur, and the certainty of its operation is restricted to within very circumscribed limits,—affecting as it does only that small percentage of taxpayers (probably about 1 per cent.) whose transactions in any year land them in absolute loss. It is not, and cannot be made, general in its application.

47. Beyond what has been said, the only thing that can be urged in its favour is that it is simple to understand, but no one has set up a claim that the present system of taxation with its reducing and varying exemptions, its differentiation as to source, its graduation of rates on bewildering curves and its aggregation of classes of income, to determine the rate applicable to each class of income for any year, is easily understood ; and this mild flavour of simplicity would not exert any appreciable influence towards better comprehension. These other complexities are not removed, and however easily the carrying forward of losses can be grasped, the handful of benefit of its supposed simplicity is hardly worth the holding. But even that small modicum of benefit is destroyed, for the proponents of this method propose also to alter the meaning of the word "losses" as generally understood in all business and accountancy methods by extending it to include any sum by which the taxpayer's income falls below the amount of the general exemption plus the allowance for children (if any). They say : "At present a person is not regarded by the Taxation Authorities" (nor, it may be interjected, by any one else) "as having incurred a net loss if the result of the year's operations leaves him with some income above the zero line. The effect of this proposal is to raise the datum or zero line below which loss is considered to begin —up to the amount of the general exemption or that amount plus the allowance for children, if the taxpayer is entitled to the latter allowance." As thus transmogrified the method becomes involved, difficult of comprehension, confusing to the taxpayer and more costly in administration. Even the minor merit of simplicity claimed by its advocates vanishes.

48. **The method is incapable of general application, and even within its restricted sphere it is not equitable in its operation. Because of its failure to bring about the equitable treatment for every taxpayer that the circumstances demand, this system cannot be recommended by us.**

49. *Other Proposals.*—Modifications of the British Scheme, dealing chiefly with minor phases, were submitted by several witnesses—a full description of which would swell this Report unnecessarily—and were fully discussed and considered, and after careful examination rejected. They included a proposal that a system of five yearly averages be adopted for primary producers, each quinquennium to be treated as quarantined from all preceding and succeeding years, that tax be tentatively collected on the income of each year as at present, but the whole of the period to be reviewed at the end of the five years, the average income of the period ascertained, such average to be applied to each year as though the income of each year had been an unvarying sum. Amended assessments were then to be made in respect of each of the years of the period and any balance shown when compared with the interim payments was to be paid to or refunded by the Department in final adjustment. The sixth year was to commence a second quinquennium to be dealt with exactly like its predecessor and so on. This, being neither in accordance with sound principles nor reasonably practicable in administration, was rejected by us.

50. Another proposal was a modification of the foregoing. Following the same methods up to and including the fifth year, it proposed that the adjusted averages of each year should be treated as if they were the actual income of the respective years and that the basis of taxation of the sixth year should be the fifth part of the income of itself and four times the average income of the preceding quinquennium. The seventh year would be taxed on the aggregate of the adjusted average income of three of these years plus the sixth plus the seventh year divided by five. This overcame one objection to the first named proposal in eventually abolishing its grouping into pockets of five years, but it exhibits other objections which compelled its rejection.

51. Another proposal was that the four years preceding the initiation of any scheme of averaging should be taken and with the income of the fifth year (the first of the scheme) yielding when divided by five the taxable income for that year, in the sixth year (second of the scheme) the first year would be dropped and an average of the latest five taken as the basis of taxation for that year. This proposal is unacceptable because it encroaches upon years the incomes of which have already been fully taxed and it could not be applied in similar way to the returns of new entrants into the taxable field because such entrants would not have any preceding years to bring into computation. It could, therefore, be applied to other taxpayers only in a different way from that in which it would be applied to taxpayers at the time of initiation and on account of its lack of continuity as well as for other reasons your Commissioners are compelled to reject it also.

52. *Averaging System under British Act.*—Seeing the British Act made the first and most sustained effort to reach some fair standard of assessment when one year only was considered insufficient to determine equitable incidence in the case of fluctuating incomes, witnesses naturally turned to the British system for suggestion and example. Your Commissioners feel that it merits careful study, more particularly in the light of the exhaustive inquiry and weighty deliverance of the Commission which reported on the tax in all its aspects in 1920. Its report dwelt at length on the basis for assessment, and on this point the position is summed up thus :—

> 479. "There has been a surprising weight of evidence in favour of the profits of the preceding year (*i.e.*, either the year to the 5th April immediately preceding the year of assessment, or the last business year completed prior to that date) being taken as the basis for Schedule D assessment. Hardly any one has had a good word for the average. *The chief benefits we see in taking the preceding year's profits as the basis* of liability under Schedule D are—
>
> (*a*) that it will make the amount of profits assessed correspond much more closely in point of time with the amount of profits actually being made ;
>
> (*b*) that it will be a very important step in the direction of uniformity and simplicity ; and
>
> (*c*) that it seems to be almost universally desired.
>
> We have, therefore, no hesitation in recommending that the change be made."

53. After giving careful consideration to the representations of its advocates and studying the system as revealed by the evidence given before the British Commission, your Commissioners are compelled to concur, in part at any rate, in its measured judgment and condemnation, of the British system of averaging. The outstanding features of that system may be briefly stated :—

54. Since 1842, the tax in the United Kingdom as to about 77 per cent. of the total yield has been levied on a "statutory income" determined by taking the average of three or more years preceding the year of assessment, and in effect the tax on the income of any one year is spread over three or more years and is paid in a corresponding number of annual instalments. Consequently prosperous years being followed by a lean year or a year of absolute loss may throw on a taxpayer a heavy liability to be paid in a year of depleted means. As under the British system the average determines both the statutory income and the rate of tax applicable thereto, a tax of large amount is frequently demanded in a year of heavy loss the payment of which may cause or accentuate serious financial embarrassment.

55. The method of requiring all taxpayers to show in their returns the income for three or more years and not the income for any individual year complicated the task of preparation, assisted evasion and impeded the detection of false returns, and even the averaging system itself was complex, some incomes being assessed on an average of three, others five, others seven years, with varying rules as to charging, allowances, rights of revision, adjustments, and other variations of detail, the whole scheme forming a maze of many methods, through which the general taxpayer found difficulty in directing his steps.

56. The taxpayer could in many cases elect upon which of the many different bases used to determine taxable capacity he should come, while for others one course only was preordained by the Act, or the rules or the practice which had grown round them, and irritation was aroused in taxpayers who felt they were shut out from avenues open to others. The privilege may have been more imaginary than real, but difference in treatment bred hostility and demands for its removal.

57. Further disturbance and frequent loss were occasioned by the fact that the averaging was not applied to individuals only but to businesses and the averaging as applied to the business continued irrespective of change of proprietorship or whether a change was made in the personnel of a partnership. Hence a person buying into a lucrative business from which the previous owner was retiring, and which had made large profits in recent years, might be handicapped in his earlier years—when profits were unfavorably affected by retirement of his predecessor and by his having possibly less available capital—through being required to pay tax on a statutory income determined by the profits his predecessor had made and drawn and which the entrant had never handled.

58. Assessments under the British Act are made in respect of each fiscal year, from 6th April to the succeeding 5th April, and the returns for that year are due in the intermediate May or June, and since the actual income of the year cannot at that time be declared, the taxpayer is required to assume that in that fiscal year his profits will reach a certain sum. The rule is not invariable but in the majority of cases requires that this be arrived at by averaging the adjusted profits of the three, five, or seven preceding years, the result constituting the taxpayer's "statutory income" upon which tax is then collected. This necessitates special and complicated adjustments when a business begins, changes hands or is discontinued, and again in the event of the death of the taxpayer before expiry of the year. Into the intricacies of these adjustments we need not enter, but they and other elements, not essentially inherent in the system itself but having gradually attached themselves to it, have helped to swell general dissatisfaction.

59. Even this brief outline indicates, as a more exhaustive examination would abundantly prove, that the conclusion of the British Commission was justified, which condemned the system, not because of its inequity or expense in administration, but because of the inconvenience, confusing complexity and other alien features, whose needless intrusion fostered public demand for uniformity and simplicity.

60. **When, however, a system with so many weaknesses has survived for nearly a century the criticism directed against it it has been more than once the subject of inquiry by Commissions and Parliamentary Committees and has always had stout defenders, both within and without the Department, it must contain some elements of health and soundness which befit it to occupy a useful place in a well-devised and equitable system of taxation. Pruned and cleaned of parasitic growths, stripped of the confusing excrescences which are not of the essence of the system, averaging is a healthy and beneficent plant whose fruit is wholesome. As will be seen from later paragraphs the intrinsic merits of the averaging system may be successfully grafted upon and become an integral part of a scheme of taxation whose basis of liability is the income of the year immediately preceding the year of assessment.**

RECOMMENDATION.

61. **We recommend that the income of taxpayers be made subject to tax in accordance with the provisions of the Act for the time being in force :—**

(*a*) **As to basis of liability on the net taxable income of the twelve months immediately preceding the year of assessment ; and**

(*b*) **As to measure of the rate of tax at the rate applicable for the year of assessment to the average net taxable income of the taxpayer for all the years for which the taxpayer shall have lodged returns with the Department, not exceeding the five immediately preceding the year of assessment.**

[NOTE.—In any case the first year should not be earlier than that ended 30th June immediately prior to this method coming into operation.]

62. The method should be limited to individual taxpayers and need not be extended to companies, for the reason that companies are already taxed at a flat (and not at a graduated) rate. Their fluctuating incomes are in effect already averaged down to an unvarying flat rate, and consequently they already enjoy the advantages of an averaging method—except as to the set off of losses against subsequent profits, a topic which is further dealt with in this report.

63. If the principle of graduation were dropped out of the Act and a flat rate for all taxpayers substituted—a step we do not recommend—the necessity for a system of averaging would simultaneously cease to exist.

64. The scheme as thus enunciated affords the required consideration to primary producers, but your Commissioners have also had in view that any scheme propounded should be capable of extension, as public policy or other reasons dictate, to all sections of individual taxpayers, that is, the scheme should be capable of general application.

65. The scheme should not, in our opinion, be limited to those primary producers whose operations show that losses have been sustained " resulting from adverse weather conditions." It is always difficult and often impossible to trace the exact cause of losses and the limiting of the scheme to such losses only would necessitate the conducting of numerous inquests into losses to ascertain what in each case was their cause. It is the aim of every taxpayer to avoid losses, and it may be assumed that even when they are the outcome of other causes the taxpayer should not be excluded from benefits. The terms of the reference quoted at the head of this section do not require us to express an opinion as to whether the scheme should be extended to all individual taxpayers, but it should be pointed out that many persons are engaged both in primary industries and in other vocations, the separating of which will cause complication in administration. **The scheme is capable of extension to them and to all individual taxpayers without any modification whatever, and its general application to all taxpayers would help to place Federal Income Taxation upon a sound and equitable basis.**

RECOMMENDED METHOD EXPLAINED.

66. Though the reasons for the proposed scheme are weighty, and the effects important, the change from the scheme at present followed under the Federal Income Tax Act is simple and easily stated. It rests upon the recognition and practical application of the proper function of averaging in determining taxable capacity, and the recognition also of the desirability in the interests of the taxpayer and the Revenue alike of continuing to compute tax on the income of the year immediately preceding that of assessment.

The Federal Act—

(*a*) ascertains the taxable income of the year preceding that of assessment ;

(*b*) multiplies such taxable income by the rate of tax (as per the scale) applicable thereto ; and the product is the amount of tax payable.

The scheme recommended by us—

(*a*) ascertains the taxable income of the year preceding that of assessment, adds to it the taxable income of the preceding years, not exceeding four (which had been ascertained in earlier years) and dividing the total by five, the quotient is the " taxable capacity ; "

(*b*) multiplies the taxable income of the year (that is the year immediately preceding the year of assessment) by the rate of tax (as per the scale) applicable to the quotient—the " taxable capacity ; " and the product is the amount of tax payable.

67. This simple scheme complies with all the canons of Adam Smith and with the maxim which some economists have added that any scheme of taxation should be simple in explanation and easy in comprehension.

(1) *The recommended method complies with the canon of Equity—*

68. It cannot be gainsaid that the nearest approach to equality of sacrifice is found by ascertaining the income of the subject over a sufficiently extended period and compelling him to contribute when and as required towards the support of the Government as nearly as possible in proportion to his ability, that is, in proportion to the whole assessable income derived and enjoyed by him under the protection of the State ; and it follows that the more closely any system approaches this goal the more closely does it express equity and fairness and respond to the test of the first canon.

69. Following paragraph 75 are comparative tables, showing details of the working out of twelve examples, all of them based on actual cases submitted by witnesses, and taken at random from them, the only discrimination being to take a sufficient range of cases to include small, intermediate, and large incomes. These are given with such detail as to enable each to be checked.

70. In these tables, the letters—

P.F.M. mean the Method of the Present Federal Income Tax Act.

C.F.L. mean the Method of Carrying Forward of Losses, as explained in paragraph 41 of this Report.

R.A.M. mean the Method of Averaging Recommended by your Commissioners in paragraphs 61 *et seq.* of this Report.

A.M.S. mean an Averaging Method, with Allowance for Suspense credits, as explained in paragraph 72 of this Report.

S.I. mean a Steady Income, uniform throughout the whole period.

The figures set against each show the tax payable under each method of computation.

71. The first three methods are already well known or have been explained in this report. The fifth line (S.I.) is not so much a method as a standard of perfection by which the four methods may be judged. It shows the total tax payable on the aggregate income of the period, assuming such income had been uniformly steady throughout, thus the total taxable income of the ten years reviewed in Case A is £850, equal to a steady income in each year of £85, on which the tax at present rates is £2 0s. 1d. per annum, making £20 0s. 10d. for the whole period, as quoted in the line " S.I."

72. The closest approximation to that standard is the method marked A.M.S., " An Averaging Method, with allowance for Suspense Credits." It calls for detailed explanation. The operations of a trader in normal times seldom run into an actual loss ; they more frequently fluctuate between relatively large and small profits. For such fluctuations the R.A.M. method applies all adjustments necessary to equate tax payable, but it does not completely adjust actual losses when they occur. A complete adjustment can, however, be effected by establishing in any year

of actual loss a "suspense credit"; of an amount equal to the tax which would have been payable in that year had the result stood in the income and not in the loss column. The effect of any averaging system is to allow a set off of income below the average as against income in excess of the average, and this operates fully in respect of all incomes which do not cross the border line into actual loss, but in fact the crossing into loss is merely an exaggeration of an income below the average and the loss should be subject to the same treatment and be on general principles adjusted in the same way as other less pronounced deficiencies are. For a diminished income which does not drop down to actual loss adequate adjustment is made in the smaller tax paid on that year's income, but when the amount sinks below zero there is no corresponding adjustment for the sub-zero portion (actual loss) unless "suspense credits" or some similar allowance be made. The greater accuracy secured by the inclusion of these "suspense credits" as a set off against subsequent taxes is shown clearly in the comparative tables which follow, and it will be seen that in some cases substantial amounts are involved: in one case (example "L"), covering a period of fifteen years, it reaches £1,479 12s. 1d. (£19,499 19s. 10d.—£18,020 7s. 9d.). The years of actual loss are only a very small percentage of the whole, and such adjustment would necessarily affect only a very small number of taxpayers.

73. The sums so arrived at and named for purposes of this report "Suspense Credits" would be placed to credit of the taxpayer, not as the basis of any cash refund, but to be used as a set off against any tax or taxes payable by the taxpayer in respect of future years and for no other purpose: if not so used, these credits would eventually revert to the Treasurer.

74. The A.M.S. method should not be confused with the "Carrying forward of Losses" referred to in paragraphs 41 *et seq.* It is ancillary to, and not a substitute for, the scheme we recommend. The amount of the "Suspense Credit" is valued and definitely determined by the position in the year of operations: the value of the "Suspense Credit" in relieving tax is not contingent upon the gains or losses of any subsequent year as is the case with losses under the "carrying forward of losses" proposal.

75. *While this method is the closest approximation to correct adjustment, we are not disposed at this stage, to recommend it.* Although losses are comparatively few—averaging about one per cent. of total results—the method, though equitable, introduces an element of complexity, would probably increase the cost of administration, and would not be easily understood by the majority of taxpayers. To that extent it introduces an element of uncertainty, and costliness—it complies closely with the first, but less closely with the other canons of taxation. It is not impossible that at some future date when a better knowledge of the science of taxation prevails and administrative costs are lower the method with or without modifications may be adopted with universal advantage, but **taking a practical view of the matter, and for the reasons already given, we feel unable to recommend its introduction at the present time.**

COMPARATIVE TABLES OF EXAMPLES, SHOWING TAX PAYABLE UNDER SEVERAL METHODS.

Year.	A. Taxable Income.	A. Loss.	B. Taxable Income.	B. Loss.	C. Taxable Income.	C. Loss.	D. Taxable Income.	D. Loss.
	£		£	£	£	£	£	
1 ..	72	..	..	572	156	..	203	
2 ..	13	..	141	..	..	570	25	
3 ..	3	..	655	..	670	..	579	
4 ..	222	..	558	..	563	..	759	
5 ..	115	..	340	..	722	..	434	
6 ..	72	..	388	..	308	..	203	
7 ..	13	..	..	246	156	..	25	
8 ..	3	..	..	572	..	570	579	
9 ..	222	..	141	..	670	..	759	
10 ..	115	..	655	..	563	..	434	
11 ..	..	..	558	..	..	..	..	
Totals	850	..	3,436	1,390	3,808	1,140	4,000	
Average Taxable Income	£85		£186		£267		£400	
Tax payable under—	£ s. d.		£ s. d.		£ s. d.		£ s. d.	
P.F.M.	21 15 0		120 18 5		139 15 7		146 3 8	
C.F.L.	21 15 0		68 0 8		92 1 3		146 3 8	
R.A.M.	19 19 4		83 14 10		105 3 1		124 10 2	
A.M.S.	19 19 4		62 12 9		89 8 3		124 10 2	
S.I.	20 0 10		53 15 3		75 19 2		127 19 2	

Year.	E. Taxable Income.	E. Loss.	F. Taxable Income.	F. Loss.	G. Taxable Income.	G. Loss.	H. Taxable Income.	H. Loss.
	£	£	£	£	£	£	£	£
1 ..	..	53	1,302	..	2,611	..	..	1,494
2 ..	442	..	..	882	2,629	..	4,826	..
3 ..	831	..	636	..	1,248	..	2,556	..
4 ..	1,109	..	21	..	422	..	1,883	..
5 ..	..	82	347	..	2,008	..	1,871	..
6 ..	30	..	717	..	2,259	..	2,454	..
7 ..	892	..	715	..	160	..	2,600	..
8 ..	1,300	..	420	..	1,132	..	3,871	..
9 ..	669	..	702	..	2,232	..	2,932	..
10 ..	275	..	143	..	2,534	..	..	2,417
11 ..	119	..	442	..	3,079	..	..	622
12 ..	..	..	873	..	..	1,703	1,460	..
13 ..	..	..	1,330	..	2,109	..	4,862	..
14 ..	..	..	1,403	..	2,729	..	5,652	..
15 ..	..	..	1,088	..	..	..	1,224	..
Totals	5,667	135	10,139	882	25,152	1,703	36,191	4,533
Average taxable Income	£503		£617		£1,675		£2,111	
Tax payable under—	£ s. d.		£ s. d.		£ s. d.		£ s. d.	
P.F.M.	257 17 11		477 17 10		2,101 0 1		4,302 18 10	
C.F.L.	251 8 3		445 9 5		1,950 9 11		3,481 12 5	
R.A.M.	202 4 9		404 3 5		1,808 6 3		2,678 11 9	
A.M.S.	199 10 2		380 8 5		1,705 18 5		2,471 0 1	
S.I.	192 4 6		349 12 6		1,547 5 10		2,457 8 9	

Year.	I. Taxable Income.	I. Loss.	J. Taxable Income.	J. Loss.	K. Taxable Income.	K. Loss.	L. Taxable Income.	L. Loss.
	£		£		£	£	£	£
1 ..	3,856	..	5,642	..	..	530	..	4,482
2 ..	2,922	..	2,132	..	4,417	..	14,478	..
3 ..	3,789	..	1,659	..	8,311	..	7,779	..
4 ..	2,529	..	4,349	..	11,087	..	5,649	..
5 ..	4,484	..	5,112	..	..	817	5,614	..
6 ..	3,924	..	4,131	..	305	..	7,361	..
7 ..	4,563	..	3,855	..	8,915	..	7,800	..
8 ..	3,107	..	5,281	..	13,003	..	11,613	..
9 ..	3,982	..	..	1,719	6,686	..	8,796	..
10 ..	531	..	1,936	..	2,754	..	..	7,252
11 ..	1,894	..	5,170	..	1,195	..	..	1,867
12 ..	4,831	..	10,519	..	..	..	4,380	..
13 ..	4,273	..	10,352	..	..	..	14,587	..
14 ..	1,676	..	5,642	..	..	..	16,957	..
15 ..	5,525	..	2,132	..	..	..	3,672	..
Totals	51,886	..	67,912	1,719	56,673	1,347	108,686	13,601
Average taxable Income	£3,459		£4,413		£5,030		£6,339	
Tax payable under—	£ s. d.		£ s. d.		£ s. d.		£ s. d.	
P.F.M.	6,568 7 2		12,447 10 0		13,746 9 10		28,778 11 10	
C.F.L.	6,568 7 2		12,312 2 0		13,390 9 5		24,240 7 8	
R.A.M.	5,901 8 7		9,560 6 5		9,345 3 8		19,499 19 10	
A.M.S.	5,901 8 7		9,370 19 2		9,229 17 6		18,020 7 9	
S.I.	5,891 6 3		9,199 15 0		8,599 17 10		18,097 3 9	

SUMMARY OF ABOVE EXAMPLES.

No.	Number of Years.	Average Annual Income.	Present Federal Method.	Carrying Forward of Losses.	Recommended Average Method.	Average Method with Suspense Crs.	Steady Income.
		£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
A ..	10	85	21 15 0	21 15 0	19 19 4	19 19 4	20 0 10
B ..	11	186	120 18 5	68 0 8	83 13 9	62 12 9	53 15 3
C ..	10	267	139 5 7	92 1 3	105 3 1	89 8 3	75 19 2
D ..	10	400	146 3 8	116 3 8	124 10 2	124 10 2	127 19 2
E ..	11	503	257 17 11	251 8 3	202 4 9	199 10 2	192 4 6
F ..	15	617	477 17 10	445 9 5	401 3 5	380 8 5	349 12 6
G ..	14	1,675	2,101 0 1	1,950 9 11	1,808 6 3	1,705 18 5	1,547 5 10
H ..	15	2,111	4,302 18 10	3,481 12 5	2,678 11 9	2,471 0 1	2,457 8 9
I ..	15	3,459	6,568 7 2	6,568 7 2	5,901 8 7	5,901 8 7	5,891 6 3
J ..	15	4,413	12,447 10 0	12,312 2 0	9,560 6 5	9,370 19 2	9,199 15 0
K ..	11	5,030	13,746 9 10	13,390 9 5	9,345 3 8	9,229 17 6	8,599 17 10
L ..	15	6,339	28,788 11 10	24,240 7 8	19,499 19 10	18,020 7 9	18,097 3 9
Total Taxes under respective methods	156 averaging 13 years	..	69,089 6 2	62,968 6 10	49,733 12 1	47,576 0 7	46,612 8 10
Relative percentages ..	..	..	*148.22*	*135.09*	*106.70*	*102.07*	*100*

76. The summary shows that in the twelve representative examples epitomized, having an average of 13 years, the amounts by which the other totals are in excess of the total tax (£46,612 8s. 10d.) payable by taxpayers having unfluctuating steady incomes of equal aggregate amounts are—

	£	s.	d.
Present Federal Income Tax method (P.F.M.)	22,476	17	4
Carrying forward of losses method (C.F.L.)	16,355	18	0
Recommended Averaging method (R.A.M.)	3,121	3	3
Average method (with allowance for Suspense Credits) (A.M.S.)	963	11	9

The divergencies are 48·22 per cent., 35·09 per cent., 6·70 per cent., and 2·07 per cent. respectively as compared with the tax payable (S.I.) by the recipients of steady incomes of similar volume. **The close approximation of the A.M.S. method to the standard of the tax on steady incomes bears striking testimony to its accuracy: it is closely followed by the method (R.A.M.) which for reasons already stated your Commissioners recommend.**

2. *The recommended method complies with the canon of Certainty.*

77. When Adam Smith wrote that a considerable degree of inequality is not near so great an evil as a small degree of uncertainty, he had in view the capricious exactions of eastern potentates and the overbearing demands of their underlings. The rule is not an exotic. Any scheme of taxation should be systematic and easily understood by the people, "the quantity to be paid should be clear and plain to the contributor." The scheme recommended by your Commissioners is easily understood; for instance, taking two of the examples in paragraph 75, let us trace the steps in determining the tax in (say) the twelfth year on the income of the eleventh year in—

	B.		K.	
	£			£
Income of the 7th year ..	Loss 246	.. ..	Income	8,915
,, ,, ,, 8th ,, ..	,, 572	.. ..	,,	13,003
,, ,, ,, 9th ,, ..	Income 141	.. ..	,,	6,686
,, ,, ,, 10th ,, ..	,, 655	.. ..	,,	2,754
,, ,, ,, 11th ,, ..	,, 558	.. ..	,,	1,195
Total income for five years ..	536	.. ..		32,553
Average (Total divided by 5) ..	107	.. ..		6,511
Rate of tax applicable to Average	5·8034	.. ..		46·7790
Tax payable ..	(5·8034 x 558) £13 9 10		(46·7790 x 1195)	£232 18 5

The method is simple and uninvolved and such as when once explained the ordinary taxpayer can understand and follow.

3. *The recommended method complies with the canon of Convenience.*

78. Unlike their British prototype, all the Australian Income Tax Acts have placed the basis of liability on the income of the immediately preceding year. The scheme recommended by us is in this respect Australian—it studies the time most convenient to the contributor by calculating the tax upon the income of the immediately preceding year and collecting it as soon as possible after the income on which it is based was earned, ere the surplus of a specially good year has been dissipated by the profligate or lost by the speculative, and it studies the convenience of the Treasury by making the tax at once available without risking the losses which occur when the payments are, as in the United Kingdom, virtually spread over a number of years. The British system throws its tentacles into the third, fifth or seventh year; **the scheme recommended by us assesses the whole income of the year at once and, the tax paid, the thing is done with once for all.** It avoids the inconvenience to the contributor and loss to the Treasury, inseparable from the British system, which in a year of abundance does not collect the full tax in respect of the previous year's income, and in a year of depression often seeks payment from persons who may be in financial straits, insolvent or fugitive.

4. *The recommended method complies with the canon of Economy.*

79. Systems can be conceived involving such expense in administration as to run counter to the canon of Economy, which requires that the amount contributed by the taxpayer should reach the Public Treasury with as little diminution as possible, and that it should not involve unnecessary restraint on trade or encourage evasion or cause unnecessary vexation, "for though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which a man would be willing to redeem himself from it."

80. The cost of collecting the tax under the Method of Averaging recommended by this Commission would be very little, if any, greater than under the present method.

81. Under it, inspection of practically all returns is imperative, but any system which demands close examination of all returns whether they at first sight exhibit profit or loss should be welcomed by the Treasurer as essential towards seeing that no revenue is lost by the "mere glance" now given by the receiving officers to some apparently "loss" returns. We have been informed by the Federal Commissioner of Taxation that the Department does examine these returns sooner or later to see if the loss is justified. If this be done expense is now involved in the examination, and a closer and more purposeful examination would entail little or no extra expense. If it be admitted that under any Taxation Act the ascertainment of income is important, the averaging method carries with it no further obligation on the part of the Commissioner's staff than the ascertaining of the five years' average—a very easy process involving simple addition and simple division—seeing that every figure embraced in each progressive quinquennium has under any thorough system of taxation already been ascertained.

82. The mechanical work of calculating the tax by the Department has been unduly magnified. When one remembers the large proportion of returns which contain composite incomes—that is income from personal exertion and income the produce of property—every one of which demands under the present method a two-fold calculation of tax, each one of which must be individually worked out, for the Departmental Ready Reckoner lends no aid, and if to these be added the large number of returns from partnerships, estates, trusteeships, and the like which are not directly taxable, and of companies who are assessed at a flat rate, there are seen (*a*) a very large area in which under the present method special computations of tax must be expressly made, not by the Department only, but by every taxpayer who checks his assessment, and (*b*) another area where the returns do not under either present or recommended methods require calculation of tax at all.

83. In view of the statement made by the Federal Commissioner of Taxation in his Seventh Annual Report that "The average of income for purposes of an income tax assessment would greatly increase the administrative difficulties and costs by introducing complexities from which the administration is now free, and it would considerably add to the difficulties of taxpayers in understanding their assessments," your Commissioners endeavoured to obtain an authoritative estimate of the cost of change, but the information received was so vague and unsubstantial that we have been unable to make any use of it. In his evidence before the Commission, the Federal Commissioner of Taxation declared—"When I tell you that the averaging of incomes will involve the doubling of our assessing staff, I am not exaggerating the position," but when specific requests were put to him to ascertain how his estimates of costs had been arrived at, he was forced to admit, "it is all a guess, I am sorry to say, because we have not the figures." The Deputy Federal Commissioner in Sydney estimated the increase at possibly 35 per cent. of the present cost of assessing, but he too was unable to submit any figures in substantiation of his estimate. A witness who had had fifteen years' experience in responsible positions as a taxation officer gave it as his

opinion that "under an average system there will be **a little extra work**, but this can be provided for by strict supervision and reorganization. If the present system of arriving at average cost values of stock is done away with, there will be a great saving, which can be offset against any increases in administration costs consequent upon the introduction of an averaging system."

84. It has already been made clear that the method we recommend does not "introduce complexities from which the Department is now free," and it is equally evident from the illustrations in paragraph 77, as well as the general explanations given in this report, that the scheme will not "add to the difficulties of taxpayers in understanding their assessments." On the contrary, it may pave the way for substantial economies. For instance: the intricate and costly attempt to fix for purposes of taxation the price of live stock on grounds which neither the principles of accountancy nor the practice of business approve can be modified or abandoned. The scrutiny of merchants' stock sheets can also without any loss of revenue be relaxed if the method be extended to taxpayers other than primary producers.

85. **It would require substantial increase indeed in cost—a very much heavier increase than there is any reason to apprehend—to condemn a method so essentially equitable in principle and easy of application as that recommended by your Commissioners.**

ILLUSTRATIONS.

86. A few examples founded on statements of actual operations furnished by witnesses may be given to explain clearly the method of averaging recommended:—(In each of the following examples tax is computed at the rates on incomes from personal exertion at present current under the Federal Income Tax Act).

Example 1 (actual case).

A. Year.	B. Taxable Income for the Year.	Total Income for the Five (or less) Years to date.	C. Average Income of Five Years. — Taxable Capacity.	D. Recommended Averaging Method. Rate of Tax applicable to Average Income (C).	E. Recommended Averaging Method. Amount of Tax on Taxable Income (B) × (D).	F. Averaging Method. Suspense Credits.	G. Present Federal Method. Rate of Tax applicable to Income (B).	H. Present Federal Method. Tax on Taxable Income (B) × (G).	I. Present Federal Method with carrying forward of losses.
	£	£	£		£		*	* £	* £
1 ..	14,818	14,818	14,818	77·4341	4,781	..	77·4341	4,781	4,781
2 ..	6,496	21,314	10,657	67·6970	1,832	..	46·683	1,264	1,264
3 ..	608	21,922	7,307	57·8721	131	..	9·009	23	23
4 ..	L. 31	21,891	5,473	40·1374	..	5	..	..	..
5 ..	4,533	26,424	5,285	38·9345	735	..	34·1229	644	636
6 ..	3,853	15,459	3,092	24·9027	400	..	29·7719	478	478
7 ..	4,401	13,364	2,673	22·2218	407	..	33·2783	610	610
8 ..	4,523	17,279	3,456	27·2317	513	..	34·0589	642	642
9 ..	6,645	23,955	4,791	35·7737	990	..	47·6364	1,319	1,319
10 ..	L. 5,115	14,307	2,861	23·4247	..	499	..	..	..
11 ..	601	11,055	2,211	19·2657	48	..	8·9642	22	..
12 ..	5,411	12,055	2,413	20·5582	464	..	39·7407	896	41
13 ..	7,393	14,935	2,987	24·2309	746	..	52·4224	1,615	1,615
14 ..	22,207	30,497	6,099	44·1428	4,084	..	85·7238	7,933	7,933
15 ..	24,558	60,170	12,034	71·6570	7,332	..	87·3259	8,936	8,936
Average Annual Income ..	6,727	Totals for 15 years			22,463	504	..	29,613	28,278

* Columns "G" and "H" do not relate to the recommended method, but are inserted to show in comparison how tax is computed under the present Federal method.

Column "F" shows the Suspense Credits. *This method is not recommended.*

Column "I" shows how tax would be computed under the carrying forward of losses method.

87. From the opening year the normal working of the method recommended during the initial four and the eleven following years is shown in column "E". The two last years have been especially prosperous, and the tax payable under the method recommended is increasingly heavy, being calculated on the rate (D) applicable to the taxable capacity (C) attained during the five years of which it is the latest, on the basis of the income (B) actually received during the year itself. Leaner years may be expected to follow, but the prosperous years will continue to exert an influence on the rate of tax until in course of time they fall out of the active quinquennial period.

Example 2 (actual case).

A. Year.	B. Taxable Income for the Year.	Total Income for the Five (or less) Years to date.	C. Average Income of Five Years. — Taxable Capacity.	D. Recommended Averaging Method. Rate of Tax applicable to Average Income (C).	E. Recommended Averaging Method. Amount of Tax on Taxable Income (B) × (D).	F. Averaging Method. Suspense. Credits.	G. Present Federal Method. Rate of Tax applicable to Income (B).	H. Present Federal Method. Tax on Taxable Income (B) × (G).	I. Present Federal Method with carrying forward of losses.
	£	£	£		£	£		£	£
1 ..	10,444	10,444	10,444	66·9887	2,915	..	66·9887	2,915	2,915
2 ..	10,519	20,963	10,481	67·1136	2,942	..	67·241	2,947	2,947
3 ..	4,994	25,957	8,652	59·6596	1,241	..	37·0725	771	771
4 ..	1,687	27,644	6,911	49·3384	347	..	15·9129	112	112
5 ..	8,032	35,676	7,135	50·7716	1,699	..	56·3623	1,886	1,886
6 ..	9,039	34,271	6,854	48·9736	1,844	..	61·4884	2,316	2,316
7 ..	640	24,392	4,878	36·3303	97	..	9·2137	25	25
8 ..	4,529	23,877	4,785	35·7333	674	..	34·0973	643	643
9 ..	8,927	31,167	6,233	45·0002	1,674	..	60·9754	2,267	2,267
10 ..	10,136	33,271	6,654	47·6940	2,014	..	65·9134	2,784	2,784
11 ..	12,315	36,547	7,309	51·8849	2,662	..	72·3647	3,713	3,713
12 ..	L. 6,812	29,095	5,819	42·3513	..	1,202	..	..	..
13 ..	8,436	33,002	6,600	47·3484	1,664	..	58·5658	2,058	105
14 ..	10,915	34,990	6,998	49·9850	2,269	..	68·5112	3,116	3,116
15 ..	L. 7,886	16,968	3,394	26·8350	..	882	..	..	..
Average Annual Income ..	6,700	Totals for 15 years			22,042	2,084	..	25,553	23,602

88. From the opening year the normal working of the method recommended is shown in column (E). For the treatment of the first five years of the initiation of the method either now or on the entrance of a new taxpayer into the taxable field, two proposals have been made, one only of which commends itself to us, and is illustrated above. Under it, the first year having no predecessor, its income alone is treated as determining taxable capacity, and it is taxed at the rate appropriate thereto. The second year averaged with the first determines the taxable capacity at the end of the second year, and at the rate applicable to the taxable capacity the tax is calculated on the actual income of the second year. Similarly the taxable capacity at end of the third year is found by averaging the three known years, and on the rate applicable to such average, calculating the tax on the actual income of the third year, and so on with the fourth and fifth years. For the sixth year the first year is allowed to fall out, and the taxable capacity is obtained by averaging the quinquennium containing the second, third, fourth, fifth, and sixth years. In every case the basis of liability on which the tax is calculated is the last year of the quinquennium (or shorter period if there be less than five years).

89. It may be interesting if these examples be summarized as in the table following paragraph 75.

Example No.	Number of Years.	Average Annual Income.	Present Federal Method.	Carrying Forward of Losses.	Recommended Average Method.	Average Method with Suspense Crs.	Steady Income.
		£	£	£	£	£	£
1	15	6,727	29,613	28,278	22,463	21,959	20,249
2	15	6,700	25,553	23,602	22,042	20,841	18,756
Totals ..	30	6,714	55,166	51,880	44,505	42,800	39,005
Relative percentages			*141·43*	*133*	*114·10*	*109·72*	*100*

90. Both of these cases show Suspense Credits as explained in paragraph 72 of this Report, but these Suspense Credits are for reasons given in paragraph 75 entirely disregarded in the method we recommend. The aggregate taxes payable in these cases under the method recommended by us would be £22,463 and £22,042 respectvely. In these figures no allowance is made for Suspense Credits.

91. Under the British averaging system, tax on the income of any earning year is in fact collected in one, three, five, or seven instalments spread over as many years. This, allied with another feature of that system, under which the averaging is applied to businesses as well as individuals,

involves intricate adjustments at the commencing, closing, or transferring of a business, adjustments which are wholly unnecessary in the system we recommend. It will be observed that the tax payable under the method recommended is always based upon the actual income of the immediately preceding year, in that respect, following precisely in the footprints of the Federal and all the Australian State systems—so that the payment of the tax follows closely upon the year in which the income was earned, the difference from those systems being that the rate of tax is determined by the " taxable capacity " of the subject as disclosed by his income " on a long time basis " (in these cases up to five years) instead of by the income fortuitously high or low of the immediately preceding year.

ALLEGED HARDSHIP.

92. The system of taxation which is an unmixed blessing has not yet been discovered, and it may be said that averaging as formerly understood, though its beneficent intention cannot be questioned, left much to be desired, but the scheme as herein recommended will show in comparison with any others a resolute advance towards recognised ideals. While it was quite true that in the British averaging scheme undue generosity was extended to expanding incomes and undue hardship meted out to dwindling incomes, this was mainly due to the creation by the British system of averaging of a " Statutory Income " at variance with the true income (augmented or diminished by the position of its tapering parts). In the scheme now proposed, the tax is based on the actual income of the immediately preceding year, the rate only being fixed by the averaging period, and should it be proved, which is unlikely, that the rate is unduly inflated in any special and peculiar case, the remedy could be supplied by some provision on the lines of section 64 of the present Act. This contingency is so remote that for practical purposes its consideration, beyond the mere mention, can be disregarded, for in nearly all cases where a taxpayer has been enjoying a larger income in former years any increment in rate consequent thereon when his income is lessened, seeing that such rate is applied solely to his actual income of the immediately preceding year, will not carry with it sensible hardship.

OBJECTIONS TO THE SCHEME.

93. Objections which may be voiced against the scheme recommended have already been anticipated in explaining and setting forth its advantages, but there still can be said that its adoption will involve a reduction in revenue. Any scheme, whether it be equitable or not, of allowing for losses or granting relief or providing any other method whereby taxation is eased or waived, necessarily depletes the revenue, so that even this cannot be specially urged against the proposed change now advocated. It is common to every scheme designed to secure relief from unjustly excessive taxes.

94. The claim made by primary producers is not for preferential treatment, but that they may be put on the same footing as their fellow citizens receiving steadier incomes. Their petition is for release, not from just tax, but from the inequity under which they feel they suffer by reason of uncontrollable circumstances and the failure of the present system to adapt itself to inescapable fluctuations, and they affirm that the measure of loss to the revenue which will follow if justice be now done to them is precisely the measure of the injustice under which they have hitherto laboured and still suffer. In this statement of their position your Commissioners cannot do otherwise than concur. Furthermore, the greater the loss to the revenue due to the introduction of this needed reform, the more urgent is the call for prompt and equitable adjustment and the redistribution of the burden.

95. While recognising the necessity for maintaining the revenue required for public services, we have not yet received such particulars as will enable us to estimate closely the sum which may be involved in giving effect to our recommendation, but the whole matter will be further dealt with in our Final Report. Meanwhile, it ought to be emphasized that our minds have not been swayed by questions of individual or revenue loss or gain in the adoption of one or another system. While not excluding the revenue aspect, we have confined ourselves strictly to the inquiry which the Right Honorable the Treasurer has requested us to treat as specially urgent, viz. :—What amendments are necessary or desirable with the view of placing the system of taxation upon a sound and equitable basis, and particularly to the giving to primary producers of special consideration, &c.

96. The method we recommend—as defined in paragraph 61—will afford effective consideration to primary producers, and may without alteration be extended to all or any section of the whole body of individual taxpayers immediately or as general demand and public policy may determine. If this be enacted there will cease to be any need for the giving of " special consideration " to primary producers or any other taxpayers to whose assessments the method is applied.

[NOTE.—From this section of the Report Commissioners Kerr (Chairman), Mills, and Duffy express dissent. See page 49.]

SECTION II.

TAXATION OF PROFITS ON THE SALE OF MINING LEASES.

97. Any one interested in mining who opens the Income Tax Assessment Act at section 18 (1) (*i*), which allows all calls paid upon mining shares to be deducted from assessable income, might reasonably conclude that the Commonwealth Parliament looks upon the mining industry as one which should be given specially favoured treatment.

98. That conclusion would be strengthened by a reference to section 17 of the same Act, which grants special concessions to mining companies by permitting capital expenditure in necessary plant and development to be deducted in yearly amounts based on the life of the mine, Alternatively, a taxpayer is allowed to deduct income expended for development and which, but for this section, would not be deductible from the taxable income.

99. But the evidence tendered to the Commission in Western Australia shows that expert opinion in that State regards the income taxation of the Commonwealth in its effect upon mining, particularly gold mining, as one of the obstacles to that revival of the industry which is at present an urgent need of the State.

100. The position is that the famous gold-mining centre, Kalgoorlie, like the numerous smaller centres, finds its output of gold steadily declining. The State output of gold, which in 1903, the year of maximum production (not only for Western Australia, but also for the Commonwealth), was valued at £8,770,719, had shrunk in 1918 to a value of £3,723,183. Growing costs of production, partly due to the greater expense of mining at lower levels, and still more to increased wages, are tending to make gold mining unprofitable in the "Golden Mile" and elsewhere, although the mines are stimulated by the " precarious oxygen " of the existing premium on gold.

101. The prospector is the hope of the industry. But the responsible chiefs of the industry seriously assert that the Federal income tax upon the profits of the sale of a mining lease, the chief means by which a lucky prospector may reimburse himself for years of privation and solitary toil, falls with such crushing weight that the best men are discouraged, and some cannot now be persuaded to undertake the work at all.

102. The Commission, at Kalgoorlie and at Perth, heard the evidence of leading men in the industry, including some very experienced prospectors, all of whom strongly urged that some relief from the present high taxation should be given to the prospector who discovers a saleable mine or field.

103. Instances were given such as that of a man who, after some years of skilled searching, discovered a mine, the lease of which he took up and sold for £10,000. The Commonwealth Income Taxation Department claimed £3,421 as tax, and the State claimed £2,300.

104. This would be a very formidable deduction from the profit, even if the whole consideration for the sale were paid in cash. It was represented, however, that a large part of the consideration is frequently paid in shares; that, for taxation purposes, in the absence of any established market price, these shares are assumed to possess a value not less than face value, when the fact often is that at the time they are either wholly unsaleable or are saleable only at a price representing a small proportion of the face value, and that in such cases the imposition of tax at the high rates above indicated leaves the solvency of the taxpayer at the discretion of the Commissioner.

105. Even without such discouragement, it is said that capable prospectors, never too numerous, are fast dwindling in numbers, and that few of the younger generation are attracted by a life in which the only certainties are hardships, and the rewards, if occasionally great, are rare.

106. Apart from section 14 (*a*) of the Act, and the definition of " income " which " includes the proceeds of any business carried on by the taxpayer, taxation of the profits on the sale of a lease is specifically imposed under the provisions of section 14 (*d*) inserted in the Federal Act in 1918. The sub-section reads :

> 14. The income of any person shall include—
>
> (*d*) Money derived by way of royalty or bonuses, and premiums fines or foregifts or consideration in the nature of premiums fines or foregifts demanded and given in connexion with leasehold estates, *and the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person* after deducting therefrom—
>
> (i) the part (if any) which, in the opinion of the Commissioner, is properly attributable to the transfer of any assets belonging to the lessee; and
>
> (ii) so much of any fine premium or foregift paid by the lessee or any amount paid by the lessee for the assignment or transfer of the lease as, in the opinion of the Commissioner, is properly attributable to the period of the lease unexpired at the time of the assignment or transfer by the lessee.

107. It was stated in evidence that this provision was originally inserted with a view to the taxation of profits on the sale of hotel leases, but its wording is wide enough to include mining leases, and the section is so interpreted by the Department.

108. It was urged on behalf of the prospectors that, in their case, the tax is a tax on a casual profit, and that, under Federal income taxation practice, casual profits (unless coming within a specific provision, such as section 14 (*d*) above cited) are not taxed. That is true.

109. Two questions then emerge from the discussion on the taxation of a prospector's profits on the sale of a mining lease. The first is whether such profits should be treated as an accretion of capital—a casual profit—and exempted from tax; the second whether the profits from such sales should be made the subject of special consideration. On the first question it was specially contended that the infrequent profit of a prospector is, and should be, regarded as an accretion of capital, and on that account non-taxable.

110. Whether profits from the sale of a mining lease be properly regarded as capital and not income, courts of law and taxation administrators agree that profits made in pursuance of a man's main business cannot be classed as accretions of capital. Nor is there any apparent justification for treating such income as casual profit. A prospector is a man whose business it is to seek for new mines, and, when found, to sell those mines, and, consequently, his profits do not fall under the accepted category of casual profit. Under section 10 of the Act they are treated as proceeds derived from sources within Australia of a business carried on by the taxpayer.

111. It was further contended, however, that such profits should alternatively be treated as deferred income eventually paid in a lump sum, and that the taxable sum should, for the purposes of determining the rate of income tax, be divided by a number representing the number of years during which the search had proceeded, and that the rate applicable to the amount so found be the rate charged on the whole taxable sum. This contention is dealt with in paragraph (121) of this Report. Such treatment could not, of course, be extended under the Act as it now stands.

112. The discussion so far has been kept on the simplest basis, by speaking only of the "prospector." The prospector, however, is generally equipped and maintained during his period of search by a "backer." That term should be read as meaning an individual, or a number of individuals united under some form of contract, statutory or otherwise. To what extent relief to a prospector would mean relief to the "backer" cannot be stated.

113. Again, if a fairly promising "field" is discovered, scores of leases change hands, the transactions often involving large profits to speculators and brokers or other company promoters, who certainly cannot be regarded as having done anything entitling them to special consideration.

114. The conclusion seems justified that, if relief from income taxation is to be granted to the finder of promising mines or "fields," that relief should be founded upon a view that the work and skill of a prospector is so specially valuable to the community, that it should be rewarded by granting him exemption, wholly or in part, from taxation of his profits.

115. Referring specially to Western Australia, the only State in which evidence on the question was tendered, the following statements are supported by the evidence:—

1. The mining industry, especially gold mining, is declining.
2. Its revival and continuance will depend chiefly upon fresh discoveries.
3. The vital need is for a sufficient number of capable prospectors.
4. The incidence of Commonwealth and State income taxation is causing skilled prospectors to abandon their calling, and is deterring others from entering upon that calling.

116. As to points 3 and 4, it is probable that the evidence stresses too strongly the present difficulties. The Governor's speech at the opening of the Western Australian Parliament on the 28th July of this year, included a statement that—"The rains on the gold-fields have stimulated prospecting, and 72 parties have been assisted and despatched." The speech also stated that—"The heavy impost on the sale of mines will be removed by an amendment of the Land and Income Tax Act." So far as State taxation is concerned, it appears, therefore, that the grievance complained of will shortly be remedied. But the Commonwealth impost is much the heavier.

117. Our inquiries do not lead us to the opinion that prospectors should be specially and peculiarly favoured by being granted a bounty or bonus in the shape of relief from taxation of the profits of their business, though that is really involved in the request for favorable treatment. If at any time the payment of such a bounty were found expedient it should not, in our opinion, be made in the form of a suspension of or release from taxation under the income tax law.

118. It is undoubtedly an injustice that the whole of the proceeds of a discovery should be taxed at a high rate in the year of success, and that no allowance whatever should be made for the years of unrequited toil which have preceded and contributed to the profitable discovery.

RECOMMENDATION.

119. **The prospector's case will, in our opinion, be met if the method of averaging income over a period of five years as recommended by us in paragraph 61 of this Report be enacted, and we recommend accordingly.**

120. An illustration may make the matter clear. After four years during which the prospector, a married man without children, earned, after payment of all expenses, £100, £160, £200, and £150 respectively each year, he in the fifth year found and sold a mine for a sum which, after covering all expenses, commission, and other charges, left him a net return of £10,000. With this as capital, he started in business as (say) a storekeeper or contractor, and made in the

sixth and following years net incomes of £500, £600, £700, £700, and £800 respectively. He would at present rates be subject to Federal income tax as shown in Column E, which is contrasted in Column H, with the tax under the present Federal method:—

A	B		C	D	E	G	H
				Recommended Method.		Present Federal Method.	
Year.	Taxable Income for the year.	Total Income for the five years to date.	Average Income of five years. — Taxable Capacity.	Rate of Tax applicable to average Income "C."	Amount of Tax on Taxable Income (B x D).	Rate of Tax applicable to Income "B."	Tax on Taxable Income (B x G).
	£	£	£	*d.*	£ *s.* *d.*	*d.*	£ *s.* *d.*
1	Nil	..	..	..	..	..	..
2	5	5	2	5·1315	0 2 1	5·1507	0 2 2
3	58	63	21	5·2531	1 5 4	5·4899	1 6 6
4	Nil	63	16	5·2211	..	..	..
5	10,000	10,063	2,012	17·9924	749 13 8	(Per scale)	2,725 14 8
6	458	10,521	2,104	18·5811	35 9 2	8·0492	15 7 3
7	592	11,108	2,222	19·3361	47 13 10	8·9066	21 19 5
8	700	11,750	2,350	20·1551	58 15 8	9·5977	27 19 10
9	700	12,450	2,490	21·0509	61 7 11	9·5977	27 19 10
10	800	3,250	650	9·2777	30 18 6	10·2375	34 2 6
	13,313	..	..	..	985 6 2	..	2,854 12 2

121. The large income in the fifth year has ceased to exert a direct influence in determining his taxable capacity in the tenth year, and consequently the rate of tax in column D has become more normal. During the ten years he would, under present Federal method, pay £2,854 12s. 2d. in tax, as against £985 6s. 2d. under the recommended method. His total income for the ten years is £13,313, or, including exemptions (not deductible from the steady income), £13,910, and if he had received a steady income of equal volume, viz., £1,391 yearly, the tax of £81 5s. per annum would have amounted for the period to £812 10s. In the foregoing the prospector has been treated in exactly the same way as any other primary producer would be under our recommended method—an illustration of its general applicability. The four years preceding the year of discovery were not necessarily spent in searching; their income may have been derived from this or any other avocation. His income from *any* source in Australia in the four years would average with the income of the fifth year. It is highly improbable that his operations would in any of the earlier years show an absolute loss, and consequently relief from excessive tax cannot in his case be looked for from the "carrying forward of losses" method.

122. There may arise, however, cases in which a prospector has been engaged in the search for a longer period before meeting success, and if such cases be deemed matter for special consideration, it may be suggested—though for reasons given in paragraph 110 we do not recommend—that the Commissioner be given power, on production of satisfactory evidence of the duration of the search, to determine the taxable capacity of the prospector for the purpose of taxing the income of the year of sale only, by using a divisor larger than five but not larger than the number of years spent in the search.

123. Thus under the method recommended by us, if this suggestion be adopted and it be proved to the satisfaction of the Commissioner (or the Board of Appeal) that the prospector had spent seven years in the search, the tax for the fifth (now the seventh) year would be (assuming the first two to have been unprofitable): $\frac{10063}{7}$ = average, or taxable capacity, for that year, £1,438, the rate on which, 14.3917 pence multiplied by 10,000, gives the tax, £596 13s. 1d., being a reduction of £153 0s. 7d. on the amount shown for that year in column E of the table. Other years would remain as shown in the table. If the prospector should leave the country, taking his gains with him immediately after realizing on his discovery, the position is exactly the same as with any other person who retires from business and leaves Australia—the source of his income and his residence being then both outside of Australia he is not any longer liable to Federal income tax. The tax paid by him in the sixth year in respect of his income of the fifth year is a full discharge of his liability to the Commonwealth in this regard.

124. If portion of the consideration for which the mine is sold be partly or fully paid-up shares in a company or syndicate or any other actual or contingent payment, the actual value at the time of sale of such shares or other payment should be included as part of the income and be taxable accordingly.

125. The profits of backers and speculators do not call for consideration other than that which would be extended to other taxpayers by general application of the average method recommended by us.

126. The question of the taxation of casual profits generally will be dealt with in a subsequent Report.

[NOTE.—From the recommendation in this section Commissioners Kerr (Chairman), Mills, and Duffy express dissent. See page 49.]

SECTION III.

BONUS SHARES.

127. The taxation of what are called bonus shares, at least in some of their forms, was the subject of strong protest by many witnesses. At present income tax is levied on such shares under the authority of section 14 (*b*) of the Income Tax Assessment Act, which provides that :—

> The income of any person shall include—
>
> (*b*) dividends, interest, profits or *bonus credited or paid* to any depositor, member, shareholder, or debenture-holder of a company which derives income from a source in Australia or of a company which is a shareholder in a company which derives income from a source in Australia, but not including a reversionary bonus issued on a policy of life assurance.

128. The practice is to treat the amount represented by the face value of the shares as income for the purposes of the tax, irrespective of market value, if any.

129. The distribution of bonus shares arises from the "capitalization" of amounts representing :—

1. Trading profits of the current year.
2. Trading profits of previous years which have not been distributed in the form of cash dividend.—
   (*a*) made prior to 1st July, 1914 ;
   (*b*) made subsequent to 1st July, 1914.
3. The increased value of fixed or "capital" assets.
4. The gains on the sale of fixed or "capital" assets.

130. All the witnesses who touched the subject agreed that bonus shares issued in respect of the sale or writing up of fixed or capital assets (items 3 and 4 above) being indubitably of capital origin, should be regarded only as accretions of capital, and should not be subject to tax in the hands of either the company or the shareholders. The taxation in the hands of shareholders of bonus shares issued in respect of "undistributed profits," and this term must be taken to include profits under both the headings 1 and 2 above, though Item 1 was rarely mentioned, was regarded by most witnesses as reasonable, or at least not open to the same objections as exist in items 3 and 4 above.

131. But the following considerations should be taken into account :—

(*a*) Undistributed profits, before issue in the form of shares, are first in accordance with powers conferred by the Companies Acts converted into capital.
(*b*) Capital is not a proper subject for taxation under an Income Tax Act.
(*c*) Those undistributed profits have already been taxed in the hands of the company.
(*d*) If shareholders are to bear an additional tax on these amounts when converted into capital and issued as shares, it is obviously necessary to show that the issue has in some way added to the shareholder's taxable capacity.

132. As to (*a*) and (*b*), the question of conversion into capital of what was originally income in the hands of the company has been recently considered by the House of Lords in the case of *Commissioners of Inland Revenue* v. *Blott*, *Commissioners of Inland Revenue* v. *Greenwood* (commonly known as Blott's case), where it was held that a resolution of a company effecting that conversion is "good as against the whole world, including the Crown, claiming or taxing for any other purposes." (*Times Law Reports*, Vol. 37, No. 26, June 17th, 1921.) The judgment in Blott's case is that of a majority of the House of Lords, which confirmed the judgment of the Court of Appeal and the Court of first instance.

133. As to (*c*) and (*d*) the difficulty to be faced by advocates of the taxation of bonus shares is more formidable. The issue of the shares does not alter the proportion of the shareholder's interest in the company, and adds nothing to his taxable capacity. In the words of Viscount Cave in the case above cited, "The transaction took nothing out of the company's coffers and put nothing into the shareholders' pockets ; and the only result was the company which, before the resolution, could have distributed the profit by way of dividend or carried it temporarily to reserve, came thenceforth under an obligation to retain it permanently as capital." If the company had gone into voluntary liquidation, the next day, the shareholder's interest in the distributable surplus would have been neither more nor less than it would have been if the shares had not been issued.

134. In a few instances, it may be true that the aggregate market value of a shareholder's holding would be slightly greater after the bonus issue than before, and, if so, the taxable capacity of the shareholder would be increased to the extent of that margin. The rarity of such instances may be inferred from the fact that such a contingency was not suggested in any one of the five judgments delivered in the House of Lords in Blott's case.

RECOMMENDATION.

135. On the grounds specially that bonus shares are capital and that the issue of those shares affects neither the proportionate interest of the shareholder in the company nor his taxable capacity, the Commission is of opinion that bonus shares should not be treated as liable to income tax in the hands of the recipient shareholders.

136. As to the revenue effect of that course, the Federal Commissioner of Taxation stated that the company rate was fixed as representing a fair average of the rates paid by individual

shareholders. The more accurately the company rate reflects the true average of shareholder's rates, the less will be the effect on the revenue, but there are two factors, each of which will have an adverse revenue effect.

137. The non-inclusion of bonus shares in the recipient's taxable income, from the fact that their value would not become operative in determining the aggregate taxable income of the taxpayer, would result in the rate of tax chargeable to him being less than it would be if the bonus shares were treated as taxable in his hands.

138. Under the present method of allowing rebate to a shareholder in his assessment in respect of a dividend upon which the company has already paid tax, he is only allowed (section 16 (2) (*a*) of the Act) a rebate in respect of the amount paid by the company at his individual rate of tax when it is less than the rate paid by the company. This practice means in many cases some revenue gain, which would have to be foregone if bonus shares are not taxed as income in the hands of the recipients.

139. There is, however, one situation as to which provision would have to be made in order to prevent certain company trading profits escaping taxation altogether. That is the case in which profits of the current year are immediately capitalized and issued in the form of bonus shares.

140. This practice is specially liable to be followed in cases of large businesses in the form of proprietary companies, either "one man" companies or companies owned by a small number of persons. The Commissioner of Taxation pointed out that, as the Act now stands, under such circumstances a company would not be liable to taxation, and if, in accordance with the above recommendation, the shares be treated as capital, the shareholder would be untaxed. The provision to be made to meet this situation should preferably be in such a form as to make taxable the profit in question while it is still income in the company's hands.

[NOTE.—From the recommendation in this section Commissioners Farleigh and Duffy express dissent. See page 39.]

SECTION IV.

BOARD OF APPEAL UNDER THE INCOME TAX ACT.

141. There was perhaps no single subject upon which such unanimity of opinion was manifested by witnesses as upon the necessity for the appointment of a tribunal, other than a Court, to deal with the numerous cases under the Income Tax Act in which taxpayers dissent from the decisions of the Commissioner, but for various reasons are unable or unwilling to assert what they believe to be their rights, in a superior Court.

142. The present position is that the Income Tax Assessment Act (section 37) provides that a taxpayer who is dissatisfied with an assessment made by the Commissioner, may lodge an objection in writing, and, if he is also dissatisfied with the decision of the Commissioner upon the objection, he may ask the Commissioner to treat his objection as an appeal, and forward it "either to the High Court, the Supreme Court, or a County or District Court of a State, or such other Court as is specified in that behalf by proclamation." Sub-section (6) of section 37 precludes the proclamation of any Court of status inferior to that of existing District or County Courts, and, in practice, the choice of the taxpayer lies between the High Court and the Supreme Court of a State.

143. The expense, delay, and risk of proceedings in the superior Courts are said to deter taxpayers (particularly where the amount involved is not large) from seeking a judicial determination of points at issue between themselves and the Taxation Department, and some witnesses considered that there were occasions on which departmental officers had taken advantage of this reluctance. It is contended also that, in many cases, no point of law arises, but the issue is one depending upon differing views as to facts. All the witnesses were agreed that, where a question of law is involved, an appeal should lie from the suggested Board of Appeal to the High Court or a Supreme Court.

144. As to the nature of the tribunal to be made available to taxpayers, there were a few exceptions from the general view. Two witnesses preferred the County Court to any tribunal specially appointed to deal with taxation matters only, and in Western Australia, where there are no Courts corresponding to the District or County Courts of other States, and where the practice is for the City Magistrate of Perth to adjudicate upon appeals from decisions of the State Commissioner of Taxation, some witnesses favoured the jurisdiction of magistrates to deal with all such cases, Federal and State. One obvious objection to the imposition of new duties upon existing Courts is that they already seem overloaded with current law work, and another objection is that the evidence taken by the Commission disclosed a very widespread desire for a tribunal less hampered by technical rules of evidence and procedure than are the ordinary Courts of law. There is undoubtedly a general belief that such a tribunal would be cheaper, more direct, and more speedy in its methods, and would give greater satisfaction to the taxpayers.

RECOMMENDATION.

145. The Commission is of opinion that it is desirable to constitute a Board of Appeal on the lines suggested by many witnesses, that is, a tribunal of three persons with fixed tenure for a term of five or seven years, one of whom should have preferably, but not necessarily, knowledge of law, one general commercial experience, and one experience in accountancy.

146. Many witnesses suggested that such a Board should be appointed in each State. Experience alone can supply the data for a safe judgment as to the number of Boards which would be permanently required. Amendments of practice, for example the early issue as announced in the Taxation Commissioner's evidence of the departmental rulings and interpretations affecting taxpayers and also poss ble amendments of the aw in consonance with recommendations of the Commission, may reduce the volume of disputes between taxpayers and the Department.

147. In the opinion of the Commission, the wisest course as a beginning will be to appoint one Board. After making allowance, so far as possible, for a probable reduction in the number of appeals from the Commissioner's decisions, the experience gained by the working of the first Board would within a reasonable time enable a decision to be reached as to whether and to what extent the constitution of additional Boards would be justified.

148. The Commission is satisfied—

1st. That with the present heavy burden of direct taxation it is imperative that some action be taken to allay existing discontent by giving taxpayers access to an independent tribunal (with a simple and inexpensive procedure) for the determination of disputes with the Department.

2nd. That the expense of maintaining a tribunal to meet the clamant requirements of taxpayers is abundantly justifiable.

3rd. That there is no justification for the immediate creation of a number of Boards, some of which might become redundant.

149. It may be impossible to afford at once all the facilities desired, but taxpayers will no doubt appreciate the inauguration on careful lines of a reform, the machinery of which can be extended as experience warrants.

150. The Board when appointed should be given power to deal with appeals in all matters in which the Commissioner's discretionary power is not subject to review [with the exception of purely administrative matters, such as prescription or delegation of powers, (sections 5A, 6, and 7), power to require returns, make default assessments, &c., &c. (sections 28 (2), (3), 29, 32, 41 (2), (3), 42, 46A (2), 50A, 52 (*f*), 52A (*d*), 55, 56)], and generally with all matters in which taxpayers are dissatisfied with the Commissioner's decision, including those in which there is now a right of appeal to a Court under section 37 of the Income Tax Assessment Act.

151. The Commission approves of the view generally expressed by witnesses on the subject, that the Board's decisions as to matters of fact should be final.

152. It is considered that it should be the duty of the Commissioner to forward an objection to his decision to the Board when requested to do so by any dissatisfied taxpayer within 30 days of the receipt by him of such request.

153. The parties should have the right to appear before the Board in person, or by representative.

154. With a view to discouraging appeals to the Board on unimportant issues or on frivolous or unreasonable grounds, it is suggested that the appellant should be required to deposit a prescribed fee at the time of lodging an appeal. In the event of the Board considering the appeal frivolous or unreasonable the Board shall have the power to order the forfeiture of the whole or part of the fee.

155. It is, perhaps, hardly necessary to say that it is not intended—

(*a*) That the Board should have administrative functions;

(*b*) That a taxpayer should have access to the Board except by way of appeal from a decision of the Commissioner; or,

(*c*) That the right of a taxpayer to appeal either direct from the Commissioner or from the Board to a superior Court should be in any way restricted.

156. The Board would, of course, be given all powers necessary for the exercise of the jurisdiction to be conferred upon it. Among special powers, it is recommended that the Board be given the right, when it thinks necessary, and after hearing the parties, to state a case for determination of the High Court, the expenses of the proceedings before the Court to be borne by the Crown.

157. In cases also where a taxpayer succeeds in proceedings before the Board, and the Commissioner of Taxation appeals to the High Court, it is recommended that irrespective of the result the whole expenses of the proceedings in the Court be borne by the Crown.

158. A taxpayer desiring to appeal to the High Court from a decision of the Board should, in our opinion, have the right to apply to the Board for a certificate (which the Board should have discretionary power to grant) that the matter is one of such general importance as to warrant the payment by the Crown of the appellant's taxed costs of the appeal (but not exceeding an amount to be specified by the Board), and that, where such a certificate is issued, the Crown should assume responsibility for payment of taxed costs up to the amount so specified.

159. It may be said that, where there is an appeal to the High Court from the Board's decision, either by the Crown, as represented by the Commissioner of Taxation, or by a taxpayer,

the decision as to whether the matter in issue is one of such general importance as to justify payment of costs by the Crown, irrespective of the result, should be for the High Court, and not for the Board. The Commission has considered that point, and is of opinion that the responsibility for that decision should be intrusted to the Board. If left to the High Court, a taxpayer would not know until final judgment had been given whether or not he would have to bear the whole costs if he failed, or the difference between taxed costs and costs between solicitor and client if he succeeded. The Commission is of opinion that this uncertainty and risk would have the very undesirable effect of reducing to a large extent the accessibility and value of the Board to taxpayers, as a taxpayer would be likely to refrain from approaching that tribunal if he knew that, in the event of a decision favorable to his claim, the Commissioner of Taxation would almost certainly appeal to the High Court. A taxpayer might equally be impelled to refrain from approaching the Board by the consideration that, if he failed there, any appeal to the High Court would be wholly at his own risk, although the point at issue were one the decision upon which would be of wide application.

160. With the discretionary powers recommended to be given to the Board, there should be an adequate safeguard against frivolous or unreasonable appeals to the High Court at the expense of the Crown.

161. The British Commission made a recommendation similar in effect to those made above. The paragraph in which they deal with the matter reads as follows:—

> (594) "With regard to costs, it is argued that an important point of principle may be raised by an appellant who is not financially strong enough to take the risk of fighting his case through to the highest Court, and that for this reason points of principle may sometimes be decided by default rather than by judicial determination. On the other hand, it is pointed out that if it were laid down as a rule that, where a case is carried from a Court of First Instance by the Revenue, further costs on both sides would be paid by the Crown, litigants would be encouraged to take "fighting points" to the High Court by the knowledge that if they obtained a favorable decision in the first Court they would have a comparatively light bill of costs in any subsequent proceedings. It is to be remembered that costs paid by the Revenue are ultimately borne by the general body of taxpayers. We have considered this matter very carefully, and have borne in mind that the Revenue authorities in certain test cases consider the circumstances of the appellant, and by agreement, at their discretion, pay the costs of both sides; but we do not think that this is enough, and we therefore suggest that, *where the taxpayer has taken the case to the High Court, and has obtained a decision in his favour in that Court or the Court of Appeal, the Revenue, if they decide to take the matter higher, should pay the costs of the taxpayer as well as their own in the higher Court.*"

It may be remarked that the High Court referred to in the paragraph quoted is not, as in Australia, the final Court of Appeal, but the Court to which such cases would in the first instance be taken.

162. Another function which, in the opinion of the Commission, should be intrusted to the Board is that of deciding the extent of remission of taxation (if any) which should be granted to an applicant under the relief section 64. That section constitutes, as the Board to deal with such cases, the Commissioner, the Secretary to the Treasury, and the Comptroller-General of Customs. No imputations were made against the fairness and capacity of the existing Board, but there were numerous and strong expressions of a desire on the part of the public, that applications under section 64 should be decided by a Board, the members of which are independent of Commonwealth Departments. Three specific complaints were made against the present arrangement, namely—first, that long delays are too frequent; second, that, from the absorbing nature of their other duties, the public officers now forming the Board under the section cannot afford to give the time requisite to deal promptly and effectively with the cases arising; and, third (this was given great emphasis), that taxpayers have no right of appearance before the Board. As to delays, a number of specific instances were submitted to the Commission, and, although the Department showed in a general reply that these are sometimes due to the taxpayer's failure to supply information promptly, there was clearly a considerable residue of cases in which the taxpayer was not the cause of delay.

SECTION V.

DOUBLE INCOME TAX.

163. The Commonwealth scheme of Income Taxation applies only to incomes arising within Australia. The British scheme, like that of India, Canada, and Newfoundland, takes a wider sweep and taxes incomes of residents whether those incomes arise within the country of residence or elsewhere. For the purposes of the British Income Tax, a resident is a person who lives within the British Isles for six months in any one year. The British system leads inevitably to double taxation of incomes gained in Australia by a person resident in the United Kingdom as both Commonwealth and British taxes are leviable.

164. This double taxation, that is in both the Dominions and the United Kingdom, of the profits from Dominion investments owned by persons resident temporarily or permanently in the United Kingdom, had been a subject of complaint for many years before the war. During the war the rapid increase of rates of taxation throughout the Empire transformed a chronic but not very severely felt grievance into one much more acute.

165. In 1917 the subject was discussed at the Imperial War Conference, which passed the following resolution:

> "That the present system of double income taxation within the Empire calls for review in relation—
>
> (1) to firms in the United Kingdom doing business within the Overseas Dominions India and the Colonies;
>
> (2) to private individuals resident in the United Kingdom who have capital invested elsewhere in the Empire, or who depend upon remittances from elsewhere within the Empire; and
>
> (3) to its influence on the investment of capital in the United Kingdom, the Dominions and India, and to the effect of any change on the position of British capital invested abroad.

166. The Conference, therefore, urges that this matter should be taken in hand immediately after the conclusion of the war, and that an amendment of the law should be made which will remedy the present unsatisfactory position."

167. In 1916 and 1918 a partial remedy was provided wholly at the expense of the British Exchequer, and when in 1919 a British Royal Commission was appointed to inquire into Income Tax, arrangements were made for a Conference between the members of the Commission and, representatives of the Dominion Governments in order that the views of the Dominions might be ascertained on the subject of Double Income Tax within the Empire. The Commission selected eight of its members as a sub-Committee to confer with the Dominion representatives and make a report to the main body. At the Conference which followed, Australia was represented by Mr. G. H. Knibbs, C.M.G. (then Commonwealth Statistician), and representatives of Canada, India, New Zealand and South Africa also attended. After prolonged discussion, the sub-Committee adopted and the Commission later indorsed, a recommendation in these terms:—

> "Firstly, that in respect of income taxed both in the United Kingdom and in a Dominion, in substitution for the existing partial reliefs, there should be deducted from the appropriate rate of the United Kingdom Income Tax (including super-tax) the whole of the rate of the Dominion Income Tax charged in respect of the same income, subject to the limitation that in no case should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom Income Tax (including super-tax) to which the individual taxpayer might be liable; and, secondly, that any further relief necessary in order to confer on the taxpayer relief amounting in all to the lower of the two taxes (United Kingdom and Dominion), should be given by the Dominion concerned."

168. The Federal Commissioner of Taxation has informed us that this recommendation has been accepted by all the Dominions except Australia, and has been made operative in Great Britain so far as the relief from Double Taxation to be afforded by British authorities is concerned. The question whether Australia should adopt the recommendation of the Royal Commission and bear its share of the full measure of relief which is suggested has been fully considered by us.

169. The Federal Commissioner of Taxation in his evidence before us expressed the view that if the Commonwealth entered into the arrangement, Australia should abandon its present method of taxing only incomes which arise in Australia, and in future should also levy taxes on the ex-Australia incomes of its residents.

170. We consider that there is no essential relationship between these two matters (the adoption of the British Royal Commission's recommendation and the taxation of ex-Australia incomes) and that the adoption of either one of the suggestions should not be regarded as necessarily dependent upon the adoption of the other.

171. There is, however, a revenue aspect. The estimate supplied to the Commission as the present annual cost to the Commonwealth and States of adopting the arrangement with Great Britain is £45,000. The mode by which this and any other reduction in revenue, consequent upon the adoption of our recommendations, may be made good will be dealt with in a subsequent report. There are, however, other considerations which in this instance may be as important as those of revenue. Apart from allaying the irritation which is still felt, though in a lesser degree than that which found frequent and vigorous expression before the present measure of relief was afforded by the British Government, the opinion was freely voiced by several witnesses that Double Income Taxation (even the lower measure which now operates) acts as a distinct deterrent upon the investment

of British capital in Australia. No very precise estimate could be formed from the evidence as to the extent to which Double Income Taxation operates in this direction, since it was admitted by witnesses that other factors may have contributed in specific instances to the actual or threatened withdrawal of capital from investment in Australia.

172. There is a further aspect of the subject which should be borne in mind. The concession which the Commonwealth is asked to make in the proposed arrangement, may, in our opinion, be rightly regarded as a practical expression of the spirit of reciprocity which, as far as possible, should govern the transactions between fellow citizens of the Empire.

173. The whole theory of the British arrangement is that the Empire should for certain important purposes be regarded as a unit, and that while each self-governing portion retains its full right of imposing taxation at its own rates and within the limits which itself fixes, from the point of view of membership of such an Empire no taxpayer can consider himself aggrieved if his total taxation, where he is taxed by more than one authority, does not exceed the higher of the two taxes.

174. The question so far has been of importance only as between the Dominions and Great Britain, but in the future it may become of moment in the relations between one British Dominion and another. Canada, for example, taxes incomes on the same basis as Great Britain, and if it became advisable for Australia to enter into such an arrangement with Canada as the Commonwealth is now invited to make with Great Britain, there would necessarily be some negotiation as to the amount of relief to taxpayers to be afforded by each of the two Governments.

175. The relation of the Australian States to the British proposal is a matter which should not be overlooked. While the Commonwealth was represented at the British Conference, it does not appear that the States, as such, had any representation. It is clear, however, from cable advice recently received by the Federal Government that in computing relief from Double Taxation of Income, the British scheme takes into account both Commonwealth and State taxation. It is, therefore, very desirable that if the Commonwealth joins in the reciprocal arrangement, each of the State Governments should give early attention to the subject with a view of defining its position, as evidently the question must arise in a practical form so soon as the Commonwealth gives effect to the proposal. The fact that different States levy different rates will not create any practical difficulty, for it is recognised that such differences will exist, and it will be merely a question of arriving at the proportionate contributions to be made by the Commonwealth and a State or States respectively, where the deduction made in Great Britain is not sufficient to provide complete relief against Double Taxation.

176. We are in accord with the opinion expressed by the British Royal Commission in dealing with these subjects (see paragraph 69 of their Report):—

> 69. We are of opinion that any sound solution of this problem should have regard to the following principles:—
>
> (*a*) That where Income Tax is charged on the same income both in the United Kingdom and in a Dominion the total relief to be given should be equivalent to the tax at the lower of the two rates of tax imposed;
>
> (*b*) that there should be no interference either by this country or by a Dominion with the basis of assessment adopted by any other part of the Empire, and further that the settlement should be independent of increases and decreases in rate of tax, and alterations in the bases of assessment, whether here or in the Dominions;
>
> (*c*) that so far as may be practicable, relief should be given before payment of tax;
>
> (*d*) that so far as is possible, the adjustment should be made in the country where the taxpayer resides;
>
> (*e*) that there should be no interpayments of tax between the Government of the United Kingdom and the Governments of the respective Dominions.

RECOMMENDATION.

177. **We recommend therefore—**

1. **That in respect of incomes taxed both in the United Kingdom and the Commonwealth, in all cases where the deduction at present allowed from the United Kingdom tax is not in itself sufficient to insure the payment only of an amount equivalent to the higher of the two taxes, the Commonwealth Government should grant such further relief to the taxpayer as will effect that end.**
2. **That consequent upon the adoption of this recommendation, the Commonwealth and State Governments should mutually agree on the question of proportional deductions from their respective taxes in all cases where complete relief from Double Taxation is not entirely secured by the deductions under the British law.**

[NOTE.—From paragraph 170 in this section Commissioner Duffy expresses dissent. See page 40.]

SECTION VI.

TAXATION OF LESSEES' ESTATE IN CROWN LEASEHOLDS.

178. While we are agreed that in principle there are substantial grounds for not discriminating in Taxation between interest in Freeholds and interest in Leaseholds, we are unable at this stage to recommend the continuance or otherwise of Taxation of Lessee's Estate in Crown Leaseholds. This issue will find appropriate place in the recommendations of the Commission on the subject of Land Taxation as a whole which will be included in our later report.

SECTION VII.

THE GENERAL EXEMPTION AND ALLOWANCE FOR CHILDREN UNDER THE INCOME TAX ACT.

179. A considerable volume of evidence was tendered on the question of the amounts at which the general exemption and allowance for children should be fixed, and widely differing opinions on the subject were voiced by witnesses. In the majority of instances, the suggestions made seemed to be prompted by the view that the present cost of living justified an increase in the amounts fixed in the Federal Income Tax Assessment Act, apparently on the assumption that the present deductions of £100 (diminishing by £1 for every £5 by which the income exceeds £100, and so vanishing when the income reaches £600) for a single person without dependants, and of £156 (diminishing by £1 for every £3 by which the income exceeds £156, and so vanishing when the income reaches £624) for a married person, and £26 in respect of each dependent child under sixteen years of age, had been fixed with special reference to the cost of living at the time the Act came into force. It is not safe to infer that these deductions were fixed originally with such degree of conformity to an unimpeachable standard or established principle as to constitute a reliable guide in fixing the deductions which might suitably apply under the altered conditions of to-day.)

180. Nor do the various State Acts disclose any generally accepted guiding principle. The following is a summary of the provisions of the State Acts. (For a fuller statement see Appendix 3.)

—	General Exemption.		Allowance to Children.
	Gross Amount.	Special Condition.	
New South Wales	£250..	.. .. ..	£50 in respect of each dependent child under 18 years of age
Victoria ..	£150. Assessments not issued on incomes not exceeding £200	If taxable income does not exceed £500	Nil. New Bill drafted provides for £26 in respect of each dependent child under 16 years of age
Queensland ..	£200..	Diminishes at the rate of £1 in every £4. Disappears when income reaches £1,000	£26 in respect of each dependant* under 16 years of age, if taxpayer's income does not exceed £800
South Australia..	£150	.. .. ..	£15 in respect of each dependent child under 15 years of age, if taxpayer's income does not exceed £550
Western Australia	£156 for married person or person having a dependant £100 for single person	Where the income chargeable from all sources of a taxpayer who is married or has a dependant amounts to £157 and no more, the tax payable by him shall not exceed £1	£26 for each dependent child under 16 years of age
Tasmania ..	£156 for married person £200 for married person, if returned soldier £125 for single person £156 for single person, if returned soldier	See Appendix ..	Deduction of 6s. from tax for each dependent child under 16 years of age, if taxpayer's income is under £350

* NOTE.—An allowance of £26 is also made in respect of a wife and every relative by blood or marriage of the taxpayer ordinarily resident in Queensland if such wife or dependant is wholly maintained by the taxpayer. There is also an allowance of £26 for a female relative of the taxpayer ordinarily resident in Queensland whose net income does not exceed £800 if such relative resides with him, for the purpose of caring for any child or adopted child of his, and is incapacitated, either by age or infirmity, and has not an income of her own exceeding £25 per annum, and is actually dependent on him. If the taxpayer's income exceeds £800, the above allowances are reduced by £1 for each £5 of the amount over £800.

181. By way of illustration of the variety of opinion on the subject, some of the suggestions submitted by witnesses to the Commission may be cited. One suggestion was that, if a definite basis of the cost of living were arrived at, the maximum exemption should be that amount,

irrespective of income. Another suggestion was that incomes up to £500 should be exempt from taxation, while others held that all persons in receipt of more than a living wage should contribute to taxation. Upon the question as to whether the general exemption should be a diminishing one, or should apply in all cases irrespective of the amount of income, there was a similar diversity of opinion.

182. While a number of witnesses favoured the increase of the allowance for children to £50 or more, one representative stated that, in a plebiscite on the subject, 282 members of the Association he represented (out of 346 who voted) were in favour of continuance of the present allowance in the Federal Act of £26. Some witnesses expressed themselves in favour of the children's allowance being extended to cover the whole period of education, inclusive of University Course.

183. It will be observed, on reference to the summary in paragraph 180, that Tasmania is the only State in which the allowance in respect of children is not made by way of deduction from the assessable income, but by a specific deduction from the tax. The generally expressed view of witnesses was that the allowance for children should take the form of a deduction from assessable income.

184. Evidence was tendered showing that in many cases sub-section (4) of section 4 of the Income Tax Act, which imposes a tax of £1 on any gross income not less than £100, operates harshly. For example, it was contended that widows should be exempt from the special taxation applying to single persons, and, by way of illustration, one responsible witness stated that—

> "Instances are known where the gross income of a widow derived from rents has totalled just over £100. By deduction of the necessary rates and taxes, repairs, &c., the net income is brought well below the £100, and yet this person is assessed for the minimum amount of £1."

The harshness of this provision of the Act is also seen in the case of a small retailer whose net income *from all sources* amounts to not less than £100, and who might not otherwise be liable to pay any tax, yet is subject to the mimimum tax of £1.

185. The opinion was also advanced that, under a system of progressive taxation, the graduated scale of rates could be more equitably adjusted if exemptions were non-diminishing. The view that any general exemption should apply to all incomes, irrespective of their amount, is partly based upon the theory that the State in the full exercise of its powers of taxation may tax incomes up to a rate of 20s. in the £1, and that, unless the income area below the line of taxable capacity is free from encroachment, the citizen's whole means of livelihood might become forfeit to the State. That possibility is, we consider, so remote that it may be disregarded. While in theory, as well as from an administrative point of view, there may be a balance in favour of the abolition of the diminishing element, that, in our opinion, is outweighed by the practical consideration of the revenue effect of such abolition and the irritation that would be occasioned by the necessary readjustment of rates to make good the loss that would be entailed.

186. The revenue effect of altering certain provisions in the Federal Act in respect of the general exemptions and allowances for children is indicated in the following statement, the estimates in which were furnished by the Federal Taxation Authorities:—

—	Estimated Revenue Loss if the alterations in the opposite Column were adopted.
1. To repeal sub-section (4) of section 4 of *Income Tax Act* 1919, which imposes (where there is otherwise no liability to pay an income tax of £1 or upwards) a minimum tax of £1 on :—	
(*a*) a single person with no dependants who has a gross income of not less than £100 ;	£65,000
(*b*) a person in business whose total income is not less than £100	£168,000 (inclusive of the £65,000 shown above)
2. To repeal section 19 (2) of principal Act, which provides, in the case of a single person with no dependants, a diminishing exemption of £100, and to amend the Section to allow a diminishing exemption of £156 to all persons	£500,000 (inclusive of the £168,000 shown above)
3. To allow a diminishing exemption of £200 to all persons (the exemption decreasing by £1 for every £3 of the excess over £200)	£780,000
4. To allow a diminishing exemption of £250 to all persons (the exemption decreasing by £1 for every £3 of the excess over £250)	£1,000,000
5. To allow a non-diminishing exemption of £156 on all incomes ..	£1,400,000
6. To allow a non-diminishing exemption of £200 on all incomes ..	£125,000. (NOTE.—The present loss on the allowance of £26 is £230,000)
7. To increase the allowance for children from £26 to £39.. ..	£260,000 in addition to the £230,000 shown above
8. To increase the allowance for children from £26 to £52.. ..	

NOTE.—These estimates are (with the exceptions of Nos. 3 and 5) exclusive of the recent 5 per cent. increase in the rates of tax.

187. It will be seen that neither the State Statutes nor the suggestions of witnesses provide any clear guidance as to the amounts at which the exemptions should be fixed, nor as to the principle which should be followed. To the question When should a citizen first begin to contribute through an Income Tax towards the financial needs of the State? we consider the reply should be:—*So soon* as his income is more than is sufficient to maintain *him in* health and economic efficiency. The bare subsistence level discloses no taxable capacity; the level just above that of economic efficiency indicates the point at which the State may justly levy some direct contribution, however small. We are not convinced of the necessity for making any material changes in the general exemptions. The exemption for single persons should, we think, be slightly raised from £100 to £104 so as to exempt £2 per week, and the imposition of £1 tax upon *gross* incomes of not less *than* £100 should be abolished. At present the exemption for single *persons* without dependants diminishes at the rate of **£1** for every **£5** by which the income exceeds the amount of the exemption. In our opinion the rate of diminution should be the same as in the case of the exemptions for married persons, viz., **£1** for every **£3** by which the income exceeds the amount of the exemption. This alteration will mean that the exemption will disappear when the income reaches **£416** instead of **£600** as at present. The exemption of £156 for a married person without dependants does not, we think, need alteration at present. We propose that the allowance for each child should be £30, in lieu of £26, as at present.

188. The following statement shows the tax which in a few *typical* cases would be payable under the present Act compared with that payable if effect be given to the amendments we recommend:—

		Tax payable.	
		Under present Act.	If Act be amended.
		£ s. d.	£ s. d.
1	A single person with no dependants having a gross income of £100	1 0 0	Nil
2	A single person with no dependants, having net earned income of £200 ..	2 18 10	3 3 4
3	A married person with no dependants, having net earned income of £200 ..	1 7 0	1 7 0
4	A married person with one dependent child, having net earned income of £200 ..	0 10 7	0 8 4
5	A married person with two dependent children, having net earned income of £260	1 12 0	1 7 0
6	A married person with three dependent children, having net earned income of £312	2 10 2	2 1 8

RECOMMENDATION.

189. We recommend as follows:—

1. **The repeal of sub-section (4)* of section 4 of the "Income Tax Act 1919," which imposes (where there is otherwise no liability to pay an income tax of £1 or upwards) a minimum tax of £1, where there is a gross income of not less than £100.**

2. **The retention of sub-section (1) of section 19 of the Income Tax Assessment Act, which in the case of a married person (not being an absentee) provides a general exemption of £156, diminishing at the rate of £1 for every £3 by which the income exceeds £156.**

3. **The amendment of sub-section (2) of section 19 to provide, in the case of a single person having no dependants (and not being an absentee) a general exemption of £104, diminishing at the rate of £1 for every £3 by which the income exceeds £104.**

* This sub-section reads *as follows*:—

"Notwithstanding anything contained in the last three sub-sections, the tax payable by any person who—

(*a*) is not married, has no dependants, and is not an absentee; and

(*b*) has a gross income of not less than One hundred pounds, or, in the case of a person carrying on a business in Australia, has an income from the business which, after deducting from the gross income the deductions specified in paragraph (*a*) of sub-section (1) of section eighteen of the *Income Tax Assessment Act* 1915-18, amounts together with his income from all other sources in Australia to not less than One hundred pounds; and

(*c*) would, apart from this sub-section, not be liable to pay an income tax of One pound or upwards,

shall be One pound."

4. The amendment of sub-section (*k*) of section 18 of the Act, so as to provide an increase in the deduction from the assessable income of a taxpayer who is not an absentee in respect of each dependent child under 16 years of age, from £26 to £30.

[NOTE.—From this section of the Report Commissioners Jolly and Duffy express individual dissent. See pages 40 and 45 respectively.]

In concluding this our first Report,

We have the honour to be,

Your Excellency's most obedient servants,

W. WARREN KERR, (Chairman).
JOHN JOLLY.
J. G. FARLEIGH.
W. T. MISSINGHAM.
JOHN THOMSON.
S. MILLS.
M. B. DUFFY.

A. G. BROWN,

Secretary.

Melbourne, 27th October, 1921.

TAXATION OF PROFITS ON THE SALE OF MINING LEASES.

Reservation.

1. The Report expresses the opinion that "the prospectors' case will be met if the system of averaging income over a period of five years, recommended by the majority of the Commission, be enacted." **We do not favour that system, however, either for general or for special application.**

2. Two examples are furnished of the possible effects of its application in the case of a prospector.

3. Should a prospector dispose of his "find" in his first year, using the income figures given in the Report for that and the five subsequent years, the result would be as shown in the following table :—

Table 1.

Year.	Income.	Total, Five Years or Less to Date.	Average Income.	Rate on Average.	Tax Payable. Average Rate applied to actual Income.	Present Federal Method.	
						Rate.	Amount.
	£	£	£		£ s. d.		£ s. d.
1	10,000	10,000	10,000	As per scale	2,725 14 8	As per scale	2,725 14 8
2	458	10,458	5,229	38·5762	73 12 4	8·0492	15 7 3
3	592	11,050	3,683	28·6842	70 15 1	8·9066	21 19 5
4	700	11,750	2,938	23·9174	69 15 2	9·5977	27 19 10
5	700	12,450	2,490	21·0509	61 8 0	9·5977	27 19 10
6	800	3,250	650	9·2777	30 18 6	10·2375	34 2 6
					£3,032 3 9		£2,853 3 6

4. The large income in the first year not only pays at its appropriate rate of tax, but also influences the rate in the four subsequent years, thus making the tax payable during six years under the system recommended in the Report greater than under the present Federal system.

5. As the prospector is generally of a nomadic disposition, it might easily happen that the Taxation Department would not know of his existence till he had discovered something substantial. We are of opinion that results similar to those indicated in the above Table would more frequently occur through the application of the recommended averaging system than might be assumed from the Report.

6. Again, there is a not unremote possibility of the vendor of a Mining Lease leaving the country soon after reaping the results of his "find." In such a case the revenue would not receive even its lessened quota, as the large income would not influence any subsequent years of smaller income. This may be more clearly shown by taking the first five years of the example in the Report, as under :—

Table 2.

Year.	Income.	Total, Five Years or Less to Date.	Average Income.	Majority Report.		Present Federal Method.	
				Rate on Average.	Tax Payable.	Rate.	Amount.
	£	£	£		£ s. d.		£ s. d.
1	Nil	..	..	..	..	..	..
2	5	5	2	5·1315	0 2 2	5·1507	0 2 2
3	58	63	21	5·2531	1 5 5	5·4899	1 6 6
4	Nil	63	16	5·2211	..	..	..
5	10,000	10,063	2,012	17·9924	749 14 4	As per scale	2,725 14 8
					751 1 11		2,727 3 4

7. It will be seen that if the taxpayer left the country after payment of tax on the income of the fifth year he would not contribute a reasonable amount to the revenue.

8. If the system of carrying forward losses, as recommended in the Statement, p. 37, on "the giving of special consideration to Primary Producers," were in operation, any losses (as defined in that Statement) occurring during the four years preceding the year of large income would reduce the amount of tax in that year ; while, if the sale from which the large income results takes place in the prospector's first year, that method would prevent the total amount of tax for that year and the four subsequent years rising above that leviable under the present law.

9. If it is desired to give special encouragement to mining prospectors, through the medium of the Federal Income Tax Law, then special rates could be prescribed for that purpose.

W. WARREN KERR.
S. MILLS.
M. B. DUFFY.

BONUS SHARES.

Reservation.

1. We regret that we are unable to concur in the recommendation of our colleagues in this matter in respect of *Bonus Shares issued out of current or accumulated trading profits*, which have previously been taxed in the hands of the Company at the flat company rate.

2. The taxation, on distribution, of Bonus Shares of this nature was not contested before the Commission, and invariably witnesses stated that they considered it reasonable to tax this form of share distribution.

3. We feel that if the principles of aggregation and graduation are to be maintained, it is necessary to follow the distribution to the shareholder, as in the case of a cash dividend.

4. The decision of the House of Lords in the Blott Case, referred to in the Report, allows a "technical" conversion of a distribution of profits into a distribution of capital, but the fact remains that it is a distribution of accumulated or current profits to the advantage of the shareholder.

5. The following extracts from Lord Sumner's dissenting judgment in the Blott case are interesting in this connexion :—

> ". . . . It cannot matter for the purposes of the revenue what he did with the money or money's worth distributed to him, or whether its disposal was the subject of prior agreement or not.
>
> Suppose Mr. Blott had had to sue the company to get these shares ; is it to be said that his action would fail ? If not, he would succeed by virtue of a legal right, founded on the company's resolution, to receive his portion of that which had become divisible among the shareholders. He would be entitled to have this brought into his hands by action. True, he would have to claim and take it in the form of newly issued capital stock, but it would come to him as dividend. If, peradventure, the company sued Mr. Blott for calls on his shares, what would his defence be ? Why, that by payment or set-off he had satisfied his liability. It would not be that the company had contracted not to ask for calls, for there is no consideration for any such contract ; yet some defence he must have, for if he had none, everybody's intention would be defeated. If he had, it must be because dividends have been paid to him or to his use, for no other source of payment exists.
>
> . . . . . There is no ground that I know of for saying that money is not paid to a shareholder unless the intention is that he may dispose of it just as he pleases, any more than there is for saying that money may not be duly paid by book entries, but can only be paid in cash. There will be a payment even though by prearrangement there is a repayment immediately afterwards. Money, though it comes with a clog on it, is taxable, if and because it comes. How can mere nomenclature affect rights which depend on what has to be done in order to satisfy the law ? Could a company declare and pay a dividend in the ordinary way, and yet, by first calling it 'capital,' and saying it was not 'income,' prevent the cash from being taxable as income in the shareholders' hands ? Granting that the company is free to give a shareholder the money, with which to pay up his calls on shares newly issued to him, this is paying money to him or to his use, and to send him this money out of the year's profits along with his dividend warrant, or to apply it to his use in the same way and at the same time is surely to put in his hands an annual profit or gain, whether the company chooses to call it capital or nothing at all."

6. We are forced to the conclusion that if Bonus Shares issued as the result of current or accumulated profits are not taxed in the hands of the shareholder in the year of receipt, a fair amount of profit will find outlet in this way, and thus to this extent nullify the aggregation and graduation principles of the Act.

7. The fact that the profits have already been taxed in the hands of the Company does not affect the position, as the same applies to a cash distribution from accumulated profits, and there is no suggestion that a cash distribution should not be followed to the shareholder.

8. Since the shareholders, by their own votes at the Company meeting, say that the distribution shall be made to them in the form of shares instead of cash, it cannot be said that the shareholders have no voice in the form in which the distribution is made.

9. We, therefore, recommend that Bonus Shares issued out of current or accumulated profits should be taxed in the hands of the shareholder in the year of receipt, but that an adjustment should be made by allowing to the shareholder the amount of tax already paid on those profits by the Company.

J. G. FARLEIGH.
M. B. DUFFY.

DOUBLE INCOME TAX.

Reservation.

1. I regret that I am unable to concur with paragraph 170 of the Report, in which it is stated—

> "We consider that there is no essential relationship between these two matters (the adoption of the British Royal Commission's recommendation and the taxation of ex-Australia incomes) and that the adoption of either one of the suggestions should not be regarded as necessarily dependent upon the adoption of the other."

2. The adoption of the British Commission's recommendation, which is advocated in the Report, means the sacrifice by Australia of revenue on income earned in Australia, to prevent double taxation, because the British Government continues to tax the income of its residents, although earned in Australia.

3. The acceptance of this position, therefore, appears to me to recognise the principle in the British Act of taxing residents on income, irrespective of its origin, in addition to taxing income earned within its boundaries, and the Australian Act should therefore be based on this principle also, if reciprocity is to be given effect to, otherwise Australia is giving up what is rightly hers without any compensating factor at all.

M. B. DUFFY.

THE GENERAL EXEMPTION AND ALLOWANCE FOR CHILDREN UNDER THE INCOME TAX ACT.

Reservation.

1. I am unable to concur in the recommendation of the Commission on this matter for the following reasons :—

(1st) The recommendation of the Commission would perpetuate the inequities of the present Federal Income Tax Act, which—

(*a*) In the allowances for children confers greater privileges on the taxpayer with large income than upon the taxpayer of less means, whereas relief, if varying in value, should be graduated the other way about ;

(*b*) Allows a general exemption to the breadwinner and guardian of the family, which exemption is gradually diminished and wholly extinguished at some arbitrary point—a course inconsistent with the extension of the allowance for children to all classes of taxpayers, rich and poor, without distinction and increasing in value with the increase of income ;

(*c*) Expresses and values exemptions and concessional allowances in terms of income alone whereas under any system into which steep graduation of rates enters, exemptions and concessional allowances, though expressed in terms of income, should also be expressed, valued, and applied in terms of tax assessment, and (as a corollary thereto) :

(*d*) Expresses exemptions and concessional allowances in terms difficult or impossible (because of their variable character and application) for the general taxpayer to accurately appraise, whereas they should be so stated that all taxpayers may know precisely the effective value of each exemption and allowance and that the exemptions and allowances made to themselves are exactly the same as those made to other taxpayers having the like marital, domestic, or other relevant responsibilities, "the value ought to be clear and plain to the taxpayer and to every other person" ; and

(2nd) The statutory exemptions should, alike with the allowances for children and other concessional allowances, apply uniformly and have identical effect throughout the whole field of taxation.

2. One need only set out clearly the manner in which the provisions of the present Federal Income Tax Act (section 19) as to the General Exemption, and (section 18) as to other concessional allowances operate to reveal striking anomalies arising partly from (*a*) some being on a diminishing scale, (*b*) others on an expanding scale, and (*c*) all being treated as deductions from assessable

income which has the effect of reducing both the taxable income and also (owing to the graduating rates) the rate of tax on the remaining taxable income, and of causing wide divergencies between the value of the exemption or allowance in one case and the values in others.

3. Before exhibiting the effects of these conflicting and inequitable conditions, attention may be directed in a sentence to another anomaly, namely :—That though the allowance to parents is restricted to a deduction of £26 from the assessable income in respect of each child, it is without any apparent reason raised by £82 in the case of a single person or widower upon whom a child is the only dependant. Apart from this provision, the exemption of a single person is limited to £100 (diminishing as the income increases), but if the person supports a child, the exemption is raised to £182, part of which (£156) diminishes on a different scale from that applicable to the previous £100, but as to £26 (part of the £82) is continuous throughout the whole range, irrespective of how high the income may be. Clear principle is not easily discoverable in a whimsical arrangement which allows only £26 to its parents for the child born in wedlock and £82 for a child maintained by a single person.

Allowances for Children and Concessional Allowances.

4. Turning to the main question, the view that the general exemption and the allowance for children should apply to all incomes is not based on the theory that the State may tax incomes up to 20s. in the £1, as stated in the Report (para. 185), though such a tax if enacted would have the effect of leaving all persons, except those whose incomes are below the amount of the exemption, without the means of subsistence, but on the theory that there should be secured to every citizen, rich or poor, immunity from direct taxation of the income necessary to provide for himself and his dependants the necessaries of efficient economic life. It is in the interest of the State; not less than of the individual to exempt these necessaries. Moral sentiment and prudent statesmanship unite in placing a reasonably liberal construction on the term "the necessaries of efficient economic life," and regard it as including what is required to equip and sustain a healthy citizen in efficiency, economically, socially, and as a parent. The minimum required for mere physical existence is not enough ; there should be suitable housing and clothing as approved by law or custom, and nourishment sufficient for the strain of efficient work and the good development of children. Less than that is impolitic for the physique of ill-fed races degenerates, and the sources of wealth and of tax dry up ; more is unjust, for excessive exemption throws an unduly heavy burden upon the non-exempted incomes upon which the tax is levied. To all citizens, irrespective of rank or wealth, the means of subsistence interpreted with reasonable liberality—but stopping short of any expenditure which different social classes incur for the maintenance of purely conventional standards of housing, clothing, food, education, or recreation—should be sacrosanct from direct taxation. At that point the citizen should assume the financial responsibilities of citizenship and contribute directly and consciously, in degree increasing with his prosperity, to the carrying on of the public services of the country in whose control he has or may acquire a voice.

5. This principle finds partial expression in sub-section 18 (*k*) of the Federal Income Tax Act, which allows from assessable income an allowance of £26 in respect of each child under a certain age wholly maintained by the taxpayer. It applies to *all* children under the prescribed age, and looks like generous and even-handed justice. It will be seen, however, that in practice it works out inequitably. The following tables set this out. (For clearness of illustration it is assumed that the general exemption, so far as it applies, has already been deducted, though in actual practice the general exemption is the last to be deducted) :—

First Table.

(A) Total Income.	(B) General Exemption.	(C) Net Income.	(D) Tax Thereon.	(E) Deduct for One Child.	(F) Net Balance of Income	(G) Tax Thereon.	(H) Reduction of Tax Due to Allowance for Child. (D)—(G)
£	£	£	£ s. d.	£	£	£ s. d.	£ s. d.
176	150	26	0 11 5	26	Nil	Nil	0 11 5
231	131	100	2 8 0	26	74	1 14 6	0 13 6
306	106	200	5 6 8	26	174	4 10 4	0 16 4
381	81	300	8 15 11	26	274	7 16 11	0 19 0
456	56	400	12 15 11	26	374	11 14 1	1 1 10
531	31	500	17 6 7	26	474	16 2 0	1 4 7
606	6	600	22 7 11	26	574	21 0 6	1 7 5
624	..	624	23 13 10	26	598	22 5 9	1 8 1

This shows (Column H) that the greater the income the greater is the value of the allowance in respect of a child. Larger incomes show the allowance to be still more valuable, thus :—

SECOND TABLE.

(A) Total Income.	(B) General Exemption.	(C) Net Income.	(D) Tax Thereon.	(E) Deduct for One Child.	(F) Net Balance of Income.	(G) Tax Thereon.	(H) Deduction of Tax Due to Allowance for Child. (D)—(G)
£		£	£ s. d.	£	£	£ s. d.	£ s. d.
1,000	No exemption allowed to parents	1,000	47 19 9	26	974	46 1 4	1 18 5
2,000		2,000	119 5 11	26	1,974	115 19 9	3 6 2
3,000		3,000	303 18 6	26	2,974	299 4 7	4 13 11
4,000		4,000	511 17 6	26	3,974	505 15 10	6 1 8
6,000		6,000	1,087 14 8	26	5,974	1,078 17 7	8 17 1
8,000		8,000	1,872 12 2	26	7,794	1,861 10 3	11 1 11

from which it is seen that while the allowance is *nominally* the same in all cases (£26 for each child), the person of small income is allowed a deduction from his tax in respect of the upkeep of his child of only 11s. 5d., and the person of ample means is allowed for the upkeep of his child a deduction of up to £11 1s. 11d. The rate, ostensibly proportionate, is in operation steeply graduated. Is it graduated in the right direction ? Should it be graduated at all ?

If there were more than one child the contrast would be intensified.

6. As a further illustration of these uniform (?) allowances, let us take the cases of married taxpayers, each with three children, for whom the aggregate allowance is £78, and having during the year paid, say, £150 in life insurance premium, charitable donations, calls on shares in mining companies, subscription to superannuation fund, &c. (all being concessional deductions), and trace the actual allowance in tax to each in respect of the £228 deducted from the assessable income in each case.

THIRD TABLE.

(A) Total Income.	(B) General Exemption.	(C) Net Income.	(D) Tax Thereon.	(E) Deduct for Allowances.	(F) Net Balance of Income.	(G) Tax Thereon.	(H) Reduction of Tax Due to Allowances. (D)—(G)
£		£	£ s. d.	£	£	£ s. d.	£ s. d.
1,000	No exemption allowed to parents	1,000	47 19 9	228	772	32 7 1	15 12 8
2,000		2,000	149 5 11	228	1,772	121 10 1	27 15 10
3,000		3,000	303 18 6	228	2,772	263 19 7	39 18 11
4,000		4,000	511 17 6	228	3,772	459 15 5	52 2 1
6,000		6,000	1,087 14 8	228	5,772	1,011 6 3	76 8 5
8,000		8,000	1,872 12 2	228	7,772	1,775 7 0	97 5 2

that is, for an outlay of £228 from his abundant resources, the wealthy taxpayer is allowed a deduction from tax of £97 5s. 2d., or more than six (6.22) times as much as is the £15 12s. 8d. allowed for exactly the same outlay to the taxpayer who has only one-eighth of his income.

7. Such an anomaly was probably never intended, and cannot easily be justified. If it was not so intended, the question arises—How can it be most conveniently rectified ? Having regard to the variations in individual circumstances arising from the very different ways in which such outlays are made by taxpayers, and the wide range of incomes, almost all of which one or other of them affects, it would be difficult to frame a clause which would secure absolutely equal allowance in all the varying cases if the deduction be expressed and applied in terms of income. It, however, lends itself to easy solution if the allowances be expressed in terms of income *but applied at their assessment value in direct reduction of the tax assessment*. Thus, if the income exempted from tax in respect of a child be £26, and the assessment value of £26 be as per the current scale of rates 11s. 5d., the allowance may be expressed as a sum equivalent to the tax applicable to a net taxable income of £26 to be deducted in respect of each child from the tax otherwise ascertained. This will at once secure uniform and equal allowance and easy adjustment

of tax. The same method may be extended to all "concessional deductions." To repeat the examples in the first Table the adjustments in respect of one child would be—

(1) Taxable Income ..	£26.	£100.	£200.	£300.	£400.	£500.	£600.	£624.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
(2) Tax thereon ..	0 11 5	2 8 0	5 6 8	8 15 11	12 15 11	17 6 7	22 7 11	23 13 10
(3) Allowance for child	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5
(4) Net tax payable ..	Nil	1 16 7	4 15 3	8 4 6	12 4 6	16 5 2	21 16 6	23 2 5
(5) Present tax ..	Nil	1 14 6	4 10 4	7 16 11	11 4 1	16 2 0	21 0 6	22 5 9

and in the second Table—

(1) Taxable Income	£1,000.	£2,000.	£3,000.	£4,000.	£6,000.	£8,000.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
(2) Tax thereon	47 19 9	149 5 11	303 18 6	511 17 6	1,087 14 8	1,872 12 2
(3) Allowance for child ..	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5	0 11 5
(4) Net tax payable	47 8 4	148 14 6	303 7 1	511 6 1	1,087 3 3	1,872 0 9
(5) Present tax	46 1 4	145 19 9	299 4 7	505 15 10	1,078 17 7	1,861 10 3

8. If the general exemption and the concessional allowances for children, &c., were made uniform and general to taxpayers irrespective of grade or amount of income throughout the whole area of taxation, and if the allowances as provided under the present Federal Act were in addition to being stated in terms of income also stated and were applied in terms of their respective tax values, viz :—

			Tax Value. £ s. d.
Taxpayer ..	together £156	say £78 each ..	1 16 6
Consort ..			1 16 6
3 children ..	£26	= £78 ..	1 16 6
Insurance ..	£50	.. .. ..	1 2 8
Donations ..	£30	.. .. ..	13 3
Calls on shares	£70	.. .. ..	1 12 6

the allowances totalling £384 would be adjusted by deducting £8 17s. 11d. from the tax on the taxable income of each taxpayer. The several taxpayers referred to in the third Table above would be taxed as under—

(1) Taxable Income	£1,000.	£2.000	£3,000	£4,000	£6,000	£8,000
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
(2) Tax thereon	47 19 9	149 5 11	303 18 6	511 17 6	1,087 14 8	1,872 12 2
(3) Allowances	8 17 11	8 17 11	8 17 11	8 17 11	8 17 11	8 17 11
(4) Net tax payable	39 1 10	140 8 0	295 0 7	502 19 7	1,078 16 9	1,863 14 3
(5) Present tax (as per third Table)	32 7 1	121 10 1	263 19 7	459 15 5	1,011 6 3	1,775 7 0

9. The deducting of all allowances at their tax value, as exemplified in lines 2, 3, and 4 of the preceding illustrations, secures equality of treatment of all taxpayers in regard to such allowances. The present Act is inequitable as between taxpayers with similar responsibilities but dissimilar incomes, principally because its exemptions and allowances always operate on the topmost pounds of each taxpayer's income, and their value increases therefore with the increase of income and consequent increase in the rate of tax applicable to the topmost pounds, whereas to secure equal treatment to all taxpayers the respective allowances should all operate on the lowest pounds in each income where the value of them in tax is uniform throughout all taxable incomes. To deduct the allowances at their tax values would thus bring about precise agreement in the valuation of all allowances whether they be from small or large incomes. Being under

the procedure suggested, in all cases deducted (in effect) from the lower pounds of the income, the respective deductions, though still expressible at the same amounts in terms of assessable income as at present, are in most cases less valuable if also expressed and applied in terms of tax assessment. Hence the result shown in the above illustrations that the net tax payable would be somewhat greater than the present tax, and consequently either the revenue would be enriched by its use or a more ample allowance, uniform throughout the entire field of taxation, could be made without encroaching on revenue, or the advantage thus gained could be retained and treated as a set-off for such other adjustments as may entail reduction of revenue.

General Exemptions.

10. In marked contrast with the operations of these allowances is the general exemption of £100 to persons unmarried and without a dependant, and of £156 to persons married or with a dependant—in both cases the exemption is a diminishing one—in the case of single persons by £1 for every increase of £5 in income, and in the case of married persons by £1 for every increase of £3 in income. Why the disappearance should be more rapid in the case of a married person, who is fulfilling citizenship duties in a fuller sense than is the single person, is another anomaly. The following tables show the manner in which, to the point where it disappears altogether, the general exemption operates on tax payable :—

FOURTH TABLE. VALUE IN TERMS OF TAX OF DIMINISHING GENERAL EXEMPTION.

1. Person—single and without dependant—

(A) Income.	(B) Amount of Tax if there were no Exemption.	(C) Exemption Under Act.	(D) Taxable Balance.	(E) Tax on such Balance.	(F) Reduction Due to Exemption. (B)—(E)
£	£ s. d.	£	£	£ s. d.	£ s. d.
100	2 8 0	100	Nil	Nil	2 8 0
150	3 16 9	90	60	1 7 6	2 8 6
200	5 6 8	80	120	2 18 10	2 7 10
250	7 0 0	70	180	4 14 1	2 5 11
300	8 15 11	60	240	6 13 1	2 2 10
350	10 14 7	50	300	8 15 11	1 18 8
400	12 15 11	40	360	11 2 8	1 13 3
450	14 19 11	30	420	13 13 3	1 6 8
500	17 6 7	20	480	16 7 7	0 19 0
550	19 15 11	10	540	19 5 10	0 10 1
600	22 7 11	Nil	600	22 7 11	Nil

2. Person—married or having a dependant—

(A) Income	(B) Amount of Tax if there were no Exemption.	(C) Exemption Under Act.	(D) Taxable Balance.	(E) Tax on such Balance.	(F) Reduction Due to Exemption. (B)—(E)
£	£ s. d.	£	£	£ s. d.	£ s. d.
156	3 19 6	156	Nil	Nil	3 19 6
200	5 6 8	142	58	1 6 6	4 0 2
250	7 0 0	125	125	3 1 8	3 18 4
300	8 15 11	108	192	5 1 7	3 14 4
350	10 14 7	92	258	7 5 7	3 9 0
400	12 15 11	75	325	9 14 11	3 1 0
450	14 19 11	58	392	12 9 2	2 10 9
500	17 6 7	42	458	15 7 3	1 19 4
550	19 15 11	25	525	18 10 11	1 5 0
600	22 17 11	8	592	21 19 5	0 8 6
624	23 13 10	Nil	624	23 13 10	Nil

The manifest effect of these unequal exemptions and of their gradual diminution is an interference with the scheme of graduation of rate of tax and a steepening of the rate for the recipients of relatively small incomes. Incomes above £600 and £624 respectively are affected only negatively.

11. While recognising the justice of the allowance of a general exemption for the income receiver, and of allowances for children, it is one thing to recognise the justice of the principle in the abstract and quite another to support the particular shape given to it in practice, and I am unable to trace sound practice or equitable treatment in the contradictory inconsistencies of the provisions of the present Act as exemplified in these illustrations. By a strange inconsistency,

while the present Federal Act refuses in many cases to exempt from tax the bread of the bread-winner, it does grant exemption for his child, and that irrespective of whether his income be small or large; not only so, but by a climax of inconsistency the Act which denies to the citizen of substantial income the general exemption allowed to the poorer, exempts to the richer man for the maintenance of his child an amount many times greater in tax value than that allowed to the poorer taxpayer.

12. It has been held that in a graduated income tax system the tax should not be treated as a function of **the abatement** that is, of the general exemption as provided in the Federal Act; this would, of course, apply also to the varied concessional allowances to children, &c., under the Federal Act. The foregoing illustrations show that if the tax be treated as a function of **the surplus of the taxable income** over and above the abatements, sometimes called "surplus income" (the practice of the present Federal Act, which deducts the abatements **before** computing the tax), inequities result—one taxpayer is treated less favorably than another. Sound principle and equitable incidence therefore require that the tax be treated as a function of **taxable income before any deduction of abatements is made**, that the tax on such taxable income should first be ascertained and that the abatement (that is, the exemptions and concessional allowances) should be computed at their true tax value and (as is now done within certain limits only under the State Act of Tasmania) be deducted at such tax value from the tax applicable to the taxable income previously ascertained, thereby insuring that these abatements shall in every case be of equal value to all taxpayers entitled thereto.

13. Particulars were sought from the Department as to what is the loss of tax due to the allowance of the present diminishing general exemptions, but figures could not readily be furnished. From information made available however, it would appear that if the general exemptions and the allowances for children and similar concessional allowances were computed and allowed in tax values, instead of by direct deductions from assessable income, the total deductions from tax would be about the same—that is, **the extension of the general exemptions to all taxpayers and the computing of it, and also of all children and other concessions on the basis of actual tax payment instead of the basis of deduction from assessable income, would entail little, probably no, loss, and might possibly yield a slight gain to the revenue, while at the same time putting all such allowances on a basis just and equitable to all taxpayers.**

14. I respectfully submit that the real value to the taxpayer of these and similar allowances is not their action on the assessable or taxable income, but their action on the actual tax itself, and that each of the exemptions or allowances should be separately appraised, and that such appraised tax value should become and be dealt with as a direct deduction from tax assessment. The true effective value of each of the exemptions or allowances should be clearly seen and appreciated by all, and the same allowance should be made to all taxpayers, without distinction, in accordance with their marital, domestic, or other pertinent outlays.

15. I concur in the first recommendation of the report, viz., that the minimum payment of £1 by single persons having no dependants should be abolished, but dissent from the second, third and fourth recommendations, and recommend—

(a) That whatever exemptions and concessional allowances are prescribed should be constant and not diminishing or (in effect) expanding.

(b) That each exemption, and each separate true concessional allowance (excluding rates and taxes which are obligatory and payable in the ordinary course of income production, and should be treated as necessary outgoings and expenses) should be deducted in equivalent terms of tax at the scale of rates operative at any time, and applicable to the amount of such exemption or allowance, and

(c) That the amount of each exemption and allowance for children to be prescribed should be determined in accordance with the principles outlined in the fourth paragraph of this reservation, and be specifically expressed in terms of assessable income but be applied in the equivalent terms of tax assessment.

JOHN JOLLY.

THE GENERAL EXEMPTION AND ALLOWANCE FOR CHILDREN UNDER THE INCOME TAX ACT.

RESERVATION.

1. I am unable to concur in the recommendation of the Report in regard to the amount of General Exemption. The basis on which to determine the subject is certainly somewhat difficult, but consideration must be given to the following:—

(*a*) What standard of living should be exempt from taxation.
(*b*) What amount of indirect taxation is borne by small incomes.

(*c*) The expense to the Revenue in seeking after small incomes.
(*d*) The amount of benefit contributed to and received from the State by recipients of different incomes.

2. A witness, who had given special consideration to the subject, stated :—

"It will now be conceded that the idea of bare subsistence exemption is not in conformity with the social conscience. Rather there should be exempted an income sufficient, not only for a healthy existence, but for the provision of conventional comforts and luxuries usually enjoyed by what are commonly called the working classes. . . . The married couple without children should have a clear margin of savings for their future responsibilities. For single men an exemption of £150 would seem equitable. . . Small incomes bear considerable indirect taxation."

3. Another witness, representing the Taxation Standing Committee of Brisbane (embracing the commercial interests of that city), also a student of taxation, said :—

"I think we all feel that, through the increased taxation which has been imposed through the Customs, persons with an income below £500 are paying very nearly twice as much as they should. . . . . In connexion with employees receiving incomes of less than £500, you will find that there is an immense amount of work given to the Department in collecting the tax."

4. It is essential, in considering this question, to take into account a person's total contribution in work to the State of which he forms a part. It is because this important consideration is often overlooked that we get propositions for the taxation of wages, either irrespective of their size or with some small exemption limit. A true valuation of the personal contribution of each citizen to the State as a whole and the benefits received by each citizen from the State immediately dispel this idea.

5. The miner, wood-worker, iron-worker, or small farmer gives to the State the full power of his labour for the production of the State, and receives in return a limited living allowance, while others may receive much larger incomes, without much exertion, and thereby receive benefits much in excess of what they contribute to the State as a whole. In view of the dimensions of the National Income and its distribution, the work done by those with small incomes represents all the sacrifice for the Commonwealth that can be properly demanded from them, and any money required to be raised for public purposes should be levied on incomes above that figure, especially when the amount of indirect taxation is taken into account.

6. Indirect taxes fall upon small incomes by reason of —

Customs duties,
Excise duties,
Passing on of income tax by traders.

That the latter is indulged in was admitted by several witnesses.

7. *Diminishing Exemption.*—The present Federal method of diminishing the general exemption by £1 for every £3 by which the income exceeds the amount of the general exemption, besides being an element of complexity in the Act, in reality has the effect of sharpening the rise of the graduation in the early stages of taxable incomes as compared with the steady rise on larger incomes, and is an injustice to the smaller taxpayers. As an example : A Taxpayer having an income of £204, or £48 over the amount of the general exemption, does not pay tax on £48 at the rate applicable thereto, but since there are 16 times 3 in 48 the taxable amount is increased by £16 and the tax is payable on and the rate fixed by £64.

8. There appears to be no reason why the taxpayer should not clearly know his position as compared with his fellow taxpayers, and why the rate of graduation should not be plainly expressed, instead of an artificial method being adopted to increase the rate by reducing the exemption. If the amount of general exemption is fixed on a fair and reasonable basis, then there is no reason why every taxpayer should not be entitled to the same exemption, the necessary percentage being added to the present rates of tax to meet the deficiency in revenue.

9. Taxable capacity does not exist until an income exceeds a certain exemption, and to deny this exemption to some and allow it to others is not treating all taxpayers on an equitable basis. Graduation (if properly designed) should insure equity amongst taxpayers according to their taxable surplus, and no surplus is available for taxation until the exemption limit is exceeded.

10. At the present time the allowance per child applies to all taxpayers, as it is considered an amount representing the cost of upkeep, and must be borne by all who have children. This appears reasonable, but the allowance for a wife is not common to all married taxpayers, although the obligation for upkeep is the same. It therefore appears reasonable that the amount of the allowance for maintenance of wife and children of a taxpayer should be excluded from the taxable area of all taxpayers, irrespective of income.

11. Income tax should only be levied upon surpluses above these allowances, and whatever percentage is necessary added to the rates to adjust the revenue. The adjustment will not mean that any greater amount of income tax will be collected over the whole field, but it will be collected in a more equitable manner; the greater or diminished amount of tax payable by the individual will be the measure of inequity of the present method, brought about mostly by the diminishing exemption.

12. A few examples of different grades of income will serve to illustrate this aspect, estimating that 10 per cent. will need to be added to present rates, to compensate for revenue lost by allowing the exemption of £156 to all taxpayers, and estimating that 20 per cent. will need to be added if £260 is allowed to all taxpayers.

—	Actual Net Income.	Taxable Income.	Rate.	Amount Tax Payable.
	£	£	*d.*	£ *s.* *d.*
£156 diminishing exemption (present method) ..	204	64	5.5282	1 9 6
£156 fixed exemption	204	48	5.4259 + 10%	1 3 10
£260 fixed exemption	204	..	..	..
£156 diminishing	408	333	7.2494	10 1 2
£156 fixed	408	252	6.7312 + 10%	7 15 6
£260 fixed	408	148	6.0657 + 20%	4 9 10
£156 diminishing	624	624	9.1114	23 13 10
£156 fixed	624	468	8.1132 + 10%	17 8 0
£260 fixed	624	364	7.4478 + 20%	13 11 0
£156 diminishing	1,000	1,000	11.5172	47 19 9
£156 fixed	1,000	844	10.5190 + 10%	40 13 10
£260 fixed	1,000	740	9.8536 + 20%	36 9 2
£156 diminishing	2,500	2,500	21.1148	219 18 11
£156 fixed	2,500	2,344	20.1167 + 10%	216 2 6
£260 fixed	2,500	2,240	19.4512 + 20%	217 17 1
£156 diminishing	5,000	5,000	37.1109	773 2 10
£156 fixed	5,000	4,844	36.1128 + 10%	814 2 4
£260 fixed	5,000	4,740	35.4473 + 20%	840 2 0

13. One suggestion to preserve equity between taxpayers was that the amount of general exemption or children's allowances should be deducted at the minimum rate of tax from all taxpayers' assessments, the claim being made that this would insure the allowances being of equal value to all taxpayers, but by comparison with the present system it would mean that the smaller incomes would pay more tax and some of the larger incomes less tax. As an illustration, take—

"A."—A married man receiving £166 income in a year and entitled to an exemption of £156.

"B."—A married man with three children receiving an income of £244 and entitled to the allowance for three children at £26 each, plus £156 exemption.

The latter would have the same taxable surplus as "A," and under the present Federal system, both having the same surplus, would be taxed at the same rate and on the same amount, but if the deduction at the minimum rate of tax is applied the result would be as under—

—	Income.	Rate.	Amount.	Tax payable.
	£	*d.*	£ *s.* *d.*	£ *s.* *d.*
"A"	166	6.1809	4 6 1	
Rebate	156	5.1251	3 6 7	
				0 19 6
Present method—taxable income	13	5.2019	0 5 8	0 5 8
"B"	244	6.6800	6 15 10	
Rebate	234	5.1251	4 19 11	
				1 15 11
Present Method—taxable income	13	5.2019	0 5 8	0 5 8

The above examples speak for themselves, and show the inequity of asking one taxpayer with the same amount of surplus as another to pay nearly twice as much tax.

Take also the case of "C," a married taxpayer without children, with an income of £1,000, and compare with above example "A"—

	Income.	Rate.	Amount.	Tax payable.
	£	*d.*	£ *s.* *d.*	£ *s.* *d.*
"C"	1,000	11.5172	47 19 9	
Rebate	156	5.1251	3 6 7	
			..	44 13 2

Under the present method "C" would pay £47 19s. 9d., but the rebate reduces his contribution to the revenue by 7 per cent., while imposing an extra burden on "A" of 250 per cent.

14. In addition to the comparison of the various State allowances, as set out in the Report, the British and New Zealand exemptions may be quoted—

	Single.	Married.	Per Child.
Great Britain	£150 ..	£250 ..	£36
New Zealand	£300 ..	£300 ..	£50

It may also be mentioned that in these countries income tax rates are very high, and in Britain run as high as 15s. in the £1.

15. The Royal Commission on Income Tax, which submitted its Report to the British Government in 1919, recommended the acceptance of the figures quoted above, and stated :—

> "In recommending these figures, we have had regard to ability to pay and to the cost involved in collecting small sums of income tax, and we have also borne in mind that no tax can be successfully administered that is contrary to the general sense of justice in the community."

16. To determine the amount of exemption, the Report states that the standard should be sufficient to maintain a man in health and economic efficiency, but I regret that their interpretation of this standard is £104 per annum. In the face of the present cost of living, I cannot conceive that any sum so low can be said to be sufficient to maintain economic efficiency. I quite agree that there may be very wide differences of opinion as to the figure representing this standard, but £2 per week is certainly inadequate to provide an adult with bare necessities, without taking into consideration the other aspects enumerated herein.

17. After considering fully the whole of the evidence submitted on this subject and closely examining the Report of the British Royal Commission, and keeping in mind the financial position of the Commonwealth, I recommend that the present Federal Act should be amended to provide that—

1. **Exemption from income tax be allowed on that portion of a taxpayer's income which does not exceed £156 per annum in case of a person who is not married or has no dependants.**
2. **Exemption from income tax be allowed on that portion of a taxpayer's income which does not exceed £260 in the case of a person who is married or has dependants.**
3. **Exemption from income tax be allowed in respect of £36 for every child under the age of 16 maintained by the taxpayer.**

M. B. DUFFY.

(*Presented by Command ; ordered to be printed and to be added to First Report, 4th November*, 1921.)

THE GIVING TO PRIMARY PRODUCERS OF SPECIAL CONSIDERATION AS REGARDS THE ASSESSMENT OF INCOME TAX, PARTICULARLY IN RELATION TO LOSSES RESULTING FROM ADVERSE WEATHER CONDITIONS.

STATEMENT AND RECOMMENDATION OF DISSENTIENT COMMISSIONERS.

As we find ourselves unable to subscribe to the section of the Report dealing with the above subject, we submit the following statement and recommendation :—

REPRESENTATIVE EVIDENCE.

1. A considerable amount of evidence, both individual and representative, was tendered, indicating by examples :—

(1) The fluctuations in incomes to which primary producers were subject.

(2) The greater burden of taxation which, over varying periods of years, was borne by fluctuating incomes in comparison with that which fell upon steady incomes of equal aggregate volume.

The claim for consideration was urged on behalf of those whose profits, while fluctuating, rarely resulted in loss, as well as on behalf of those who frequently experienced heavy losses. Shortly after our inquiry began a witness representing the Federated Graziers' Association of Australia tendered a lengthy statement of the case from the pastoralists' point of view, citing particularly an actual case in which during a period of seven years a grazier had alternations of profit and loss of a somewhat sensational character. The remedy urged was in its main feature to base the tax upon the average income of a period, and a period of five years was proposed on the ground that it "would include a fair average of those favorable and adverse seasonal conditions which affect the primary producers' ability to contribute to taxation." The Report quotes freely from the witness's statement, including the figures of the grazier's affairs just referred to.

Computation of tax for the seven years upon those figures, comparing the result under the method above indicated (which is also the British method) with those obtained respectively from the averaging method recommended in the Report and with the system of carrying forward of losses, gives the following :—

Tax under British method	£19,568
Tax under method of averaging recommended in the Report ..	£21,177
Tax under the system of carrying forward of losses	£19,878

2. The question inevitably arose as to whether a system of averaging, if adopted, could justly be confined to any one section of taxpayers. Witnesses asserted with obvious cogency that the incomes of country storekeepers and many other suppliers of goods required for use or consumption by primary producers are also affected materially by seasonal influences. Witnesses representing the interests of primary producers, while claiming relief for themselves through a system of averaging or through the system of carrying forward losses invariably expressed their willingness that the same privilege should be extended to all sections of taxpayers who desire it, or they expressly refrained from opposing any such extension.

OPPOSITION TO METHODS OF AVERAGING.

3. In no State, with the doubtful exception of New South Wales, did a system of averaging find acceptance with the State Commissioners of Taxation, but preference was generally expressed for the system of allowing any balance of loss to be carried forward to be used as a set-off against subsequent profits. Among the reasons advanced for disapproval of an averaging system were :—

1. That under that system there is frequently an amount of taxable income which has not paid tax, and may never pay tax ;

2. That it would increase the expense and the difficulties of administration.

In that expression of opinion the State Commissioners had not before them the form of averaging recommended in the Report. One State Commissioner who perused the Statement describing the mode of averaging, which, with the exception of the feature of "Suspense Credits," is recommended in the Report, said :—

"The suggestion is in effect a modification of and an added complication to the system of tax graduation in operation."

4. A system of averaging, while it would be new to Australian Income Tax law, has been in existence in Great Britain since 1842, and that system is described with considerable detail in the Report. It is not necessary to repeat the information there given, but one or two facts should be mentioned. Under the British system the ordinary trader or professional man makes his return on the average of the three preceding years, and the farmer, while having the option of being assessed under Schedule "D" as a trader, is normally taxable under Schedules relating to the ownership or occupation of land, particularly under Schedule "B," which provides that the assessment shall be made on a statutory profit of twice the annual value of lands occupied wholly or mainly for the purpose of husbandry. The recent British Royal Commission on the Income Tax recommended that farmers should be assessed in the same way as other traders, and further recommended that ordinary traders should no longer be assessed on an average of three years, but upon the income of the previous year, which is the present Commonwealth system. That Commission remarked that "hardly any one had a good word for the average" (British system).

5. The evidence taken by the British Commission shows that where the average system works against the taxpayer (as under certain circumstances any form of averaging will), there are pressing demands for relief, and, in fact, forms of special relief have been created. The position as stated to that Commission by a representative of the Board of Inland Revenue is that "it is heads I win and tails you lose in favour of the taxpayer."

6. A taxation expert, the only witness appearing before us who had the opportunity of seeing the British system of averaging at close quarters, and with the friendly assistance of English officials, stated that it created many anomalies, and he expressed himself in favour of the system of carrying forward of losses.

7. The evidence has made it clear that neither as individuals nor as groups are primary producers united in opinion as to the respective merits of "Averaging" and "Carrying forward of Losses." For example, the United Graziers Association of Queensland put the case thus :—"Perhaps the most important matter affecting primary producers is the present annual assessment of income without regard to the operations of other years. It appears to be generally admitted that this involves considerable injustice, and suggestions have already been made to you with the object of rectifying this injustice. The two suggestions are—(1) The averaging of income over a period of years ; (2) setting of losses against subsequent profits. This Association has given long and careful consideration to this matter, and desires to record its support of the "Averaging System." So far as can be judged from the evidence already given, the second suggestion was made, not because it was not considered that the averaging principle was the most equitable and just, but owing to the administrative difficulties arising out of the introduction and continuance of that principle. While it is recognised that there are difficulties attending its introduction, and that additional work will in all probability be thrown on the Department in carrying out the scheme, we consider the principle is right, and that the difficulties are not insuperable ; also that the fact that administrative costs may be increased to a small extent is not sufficient excuse to warrant a continuance of what is considered an injustice. Much has been said as to the effect of any such scheme in the case of—(*a*) a taxpayer with an increasing income, and (*b*) one with a diminishing income. It has been contended that the former will not pay as much as he should, and that the latter will pay more than he should. The Association considers that this is a bogey which can be dismissed without injustice to any one. In the first place, the conditions of the

pastoral industry are such that no taxpayer has a regularly increasing or regularly diminishing income. The income is one which fluctuates according to the season and financial conditions. Secondly, it is considered that if such cases do exist they are so rare that consideration of them can safely be rejected for the sake of the larger principle." On the other hand, the Stock-Owners' Association of South Australia, after discussion of both systems, decided unanimously in favour of the system of carrying forward losses, on account of its greater simplicity and of the fact that where losses occur it reduces or temporarily extinguishes the tax for longer periods, and does so during the time that taxpaying capacity is at its lowest point. Individual witnesses, two of whom may be quoted, also urged the same view. One of these witnesses, with large interests in more than one State (including New South Wales and Queensland), who was heard late in the inquiry, said that "the majority of pastoralists now think the averaging system would prove very conflicting, and that the carrying forward of losses would prove the more simple way of getting over their difficulties." Another, also with large interests in Queensland, who first suggested averaging as the desired method, said, "but allowing for losses would be quite alright."

FORM OF AVERAGING WHICH, WITH THE EXCEPTION OF ONE FEATURE, IS RECOMMENDED IN THE REPORT.

8. Just before the close of our inquiry a second representative of the Federated Graziers' Association appeared before the Commission and submitted a form of averaging which differed from that advocated on behalf of the Association and which had been generally accepted by all other witnesses who favoured averaging. The witness stated that the form of averaging now put forward embodied the latest views of the Council of his Association on the matter.

9. This proposed method is not, as originally suggested, to average the net income for the period chosen, and apply the appropriate rate of tax to that average, but to apply to the income of the tax-year, the *rate* appropriate to the net average income. For example, if the net average income for the five years 1916–20 was £2,000, and the income for the year 1919–20 was £1,200, the tax for that year would be payable upon £1,200, calculated at the rate applicable to an income of £2,000. Where in any year a loss occurs, not only would that loss be treated as a deduction from the profits of the other years which make up the cycle of five years used for determining the average rate, but it was also claimed as an essential feature of the system that the taxpayer should be credited in respect of a year of loss with a sum equal to the tax for which he would have been liable had the loss been a profit of the same dimensions, and that the credit so established (designated "Suspense credit" in the Report) should be deducted from the tax subsequently leviable.

10. It will be seen that the Report, while adopting the main principle of the amended method of averaging, has for the present discarded the feature of suspense credits, though it describes that feature as being "equitable" and as "the closest approximation to correct adjustment." The feature of suspense credits, would, in our opinion, be unacceptable as part of a taxation system.

11. The following table shows how in the zone where "Suspense Credits" do not occur, the system may operate :—

Year.	Income.	Continuous Totals of Income up to Five Years and thereafter the Totals of Last Five.	Average.	Average Rate of Tax.	Tax at Average Rate on Actual Income of Year.
	£	£	£	*d.*	£
1	3,943	3,943	3,943	30·3478	499
2	4,499	8,442	4,221	32·1266	602
3	4,618	13,060	4,353	32·9711	634
4	5,819	18,879	4,720	35·3194	856
5	4,701	23,580	4,716	35·2938	691
6	6,729	26,366	5,273	38·8577	1,089
7	5,387	27,254	5,451	39·9966	897
8	21,983	44,619	8,924	60·9613	5,584
9	7,295	46,095	9,219	62·2867	1,893
10	23,834	65,228	13,046	74·0465	7,353
	£88,808		£63,866		£20,098

NOTE.—For the first year the income of the year is taken as the average on which to determine the rate, for the second year the average of the first and second and so on to the fourth. For the fifth and subsequent years the average is that of the tax-year and the four preceding years.

The figures used in the table are hypothetical ; but hypothetical figures, so long as they fairly represent a probable experience, are just as reliable for purposes of illustration as actual figures, which, as they are never likely to recur exactly, can only be regarded as typical.

12. The total income for ten years is £88,808, or a yearly average of £8,881. The tax payable in ten years on a yearly income of that amount is £22,484, but as the above figures show, the owner of the fluctuating income pays only £20,098, or £2,384 *less* than the taxpayer with steady income of the same aggregate amount.

13. It may be remarked that examples "A" and "D" of the "Comparative Examples" (p. 18 of the Report) which do not include "Suspense Credits," show a result similar though on a trifling scale compared with that in the above table, *i.e.*, that the total tax paid in respect of a fluctuating income under the system recommended is less over a term of years than that paid by the owner of a non-fluctuating income of the same aggregate amount.

14. Under this system the total of the averages arrived at for the purpose of fixing the rate over any period except in the first year will rarely correspond with the total income of the taxpayer. The difference referred to may be more readily understood by perusal of the table above.

15. In years numbered 5, 7, and 9 in the above table only do the average figures which fix the rate equal or exceed the actual income for the year, and in two of those years the difference is trifling. The above figures indicate that over the period shown £24,942 of income have in effect not entered fully into the fixing of the rates of tax, with the consequence that the scale of graduation has been materially modified. It would be no answer to this contention to say that every pound of the income is taxed simply because **some** rate is applied to each year's income. If an income of **£5,000** is taxed at the rate applicable to **£2,000** it would be more correct to say that every pound is partially taxed. With the exception of three years, that is the nature of the operation which occurs under the system, as exemplified in the preceding Table. Under this method the revenue is sometimes ahead of and sometimes behind on the actual income, and while over the whole field of taxation there may be a rough balance, it is not fair between individual taxpayers. In the above example the revenue would have to wait two, three, and four years before getting the full benefit of the good years 8, 9 and 10, and if the taxpayer died or left the country at the latter point, the revenue would never obtain its full quota.

16. In the first five years' period hardship will result in the case of a taxpayer having a declining income. The following (hypothetical) example shows that in the second, third, fourth, and fifth years the rate of tax is higher than that which would apply under the present Federal system :—

Year.	Income.	Average for Rate.	Present Rate.	Present Tax.	Average Rate.	Tax under proposed Average System.
	£	£		£		£ s. d.
First	10,000	10,000	65·4176	2,725 14 8	65·4176	2,725 14 8
Second	6,000	8,000	43·5094	1,087 14 8	56·1783	1,404 9 2
Third	2,000	6,000	17·9156	149 5 11	43·5094	362 11 7
Fourth	2,000	5,000	17·9156	149 5 11	37·1109	309 5 2
Fifth	2,000	4,400	17·9156	149 5 11	33·2719	277 5 4
				£4,261 7 1		£5,079 5 11

17. It will be seen from the above that this taxpayer would pay in the first five years £817 18s. 10d. more in tax than under the present system. A position similar in effect, though varying in degree—it may be more or less oppressive than the example shown—will be created under this system, whenever the level of income is materially lowered.

18. The Report, summing up the results of twelve examples on page 17, attaches the greatest importance to the approximation of the results of the recommended method to the standard mentioned in the preceding paragraph. But there is a method, not mentioned in that summary, which gives, on the total of those twelve examples, a result nearer to the standard than the result given by the recommended method. The superior result in those instances is given by what has generally been referred to as the British method, a method condemned by the British Commission, and in the condemnation of which the Report concurs.

19. Apart from any other inferences which may be drawn from this statement of fact, it is, we submit, clear that the Report, in adopting comparison with a steady income as the supreme test of any method, has chosen a standard much too rigid and narrow. Another inference may be drawn. Although the English method in the total of the twelve instances referred to shows a closer conformity with the standard than does the recommended method, it happens that, taking the cases individually, six on the Report method and six on the English method show the closer conformity. This suggests (what in our opinion is the fact) that *the two systems differ only in detail and not in essence* and, further, it illustrates the uncertain effects produced by the system recommended.

20. A minor, but to a large number of taxpayers not unimportant, disadvantage which would result from the adoption of the averaging system recommended in the Report would be that the present Ready Reckoner issued to the public would be of use only as a means of ascertaining the *rate* of tax. Under that system the rate so ascertained is not applied to the income to which it is appropriate, hence the amount of tax would need to be worked out in each case. The same difficulty occurs at present in the case of composite incomes, which constitute about 30 per cent. of the total taxable incomes, but the change of system would extend the difficulty to all taxable incomes. A Ready Reckoner compiled in a form (necessarily quite different from that of the present publication) which would enable the amount of tax under the averaging system to be ascertained by inspection, would be so large and expensive that it would probably be considered impracticable. The absence of such an aid means that an immense amount of extra time and effort would be consumed in tedious calculations, which under the present system are unnecessary.

The Principle of Graduation.

21. The principle of graduation of the Income Tax was not called in question in evidence, but on the question of its equity when applied to incomes which fluctuate (though not to the extent of involving actual loss) widely differing views were expressed by witnesses. It was asserted by some that equity cannot exist where a person whose income fluctuates may be liable to pay a greater aggregate amount of taxation during a given number of years than would be paid by a person having the same net income received in regular annual amounts. Witnesses of equal authority contended or clearly implied, on the other hand, that once the system of graduation is admitted as being generally the most equitable, there can be no valid claim of inequity where that system is applied to the income of the year if proper allowance be made for actual losses. The form of averaging recommended in the Report does not explicitly challenge the principle of graduation, but in effect materially modifies the scale of graduation by substituting a new standard for determining the rate of tax (viz., the average income over a period of five years) in place of the hitherto accepted standard (the taxable income of the tax year). Under the substituted standard an income of £500 in one year might be taxed at the rate applicable to an income of £7,000, or an income of £20,000 in one year be taxed at the rate applicable to £600. In any tax year if there were a large number of incomes of £500 a different rate might be applied to each of those incomes in the hands of different taxpayers.

22. It has been said that the method of carrying forward of losses also modifies the scale of graduation in respect of incomes which in some years fall below zero; but under this method it is always the appropriate rate, and not a variable rate, that is applied to the taxable income.

23. The purpose of graduation is to adjust the burden of taxation to the ability to pay. The scale operates upon taxable incomes, and, though it is not a perfect instrument, it will, if well designed, preserve a high degree of equity above the line where taxation begins. The purpose of the method of carrying forward losses which we recommend is to preserve equity below that line.

Carrying Forward of Losses.

24. The system of carrying forward any balance of loss from one year until extinguished by subsequent profits needs no elaborate discussion. While the deduction of current losses from the gross income in any tax-year is perhaps as old as income tax law, the extension of that practice has only recently come into prominence. Every taxpayer paying Income Tax on the profits of any trade, business, or profession in which losses incidental to the trade, &c., may occur, is aware that losses occurring in any one year may at present be set off against the gross profits of that year in order to arrive at the taxable income. The system of carrying forward of losses extends the present practice, so that if a year's transactions result in a net loss, say, of £1,500, and the net profits of the next year are £1,000, there would be no tax to pay in respect of that year, but a balance of £500 would remain to be carried forward; and if in the third year the net profits are £1,200, the tax would be payable upon that amount less the £500 carried forward, that is, upon £700.

25. If this system be adopted then in our opinion the meaning of the term "loss" should, for the purpose of the allowance of losses be extended to include any sum by which the taxpayer's income falls below the amount of the general exemption, plus the allowance for children (if any).

It seems reasonable that a taxpayer whose income falls below the total of those two amounts (or below the general exemption if that only is applicable) should be regarded as having incurred a loss, and that he should have the right to carry forward that loss to be set off against future taxable income.

26. At present, a person is not regarded by the Taxation Authorities as having incurred a net loss if the result of the year's transactions leaves him with some income above the zero line. The effect of the proposal here made is to raise the datum or zero line (below which loss is considered to begin) up to the amount of the general exemption, or that amount plus the allowance for children if the taxpayer is entitled to the latter allowance.

27. Thus, assuming for the purpose of simplicity that a taxpayer is entitled to the general exemption only (taken at £156, the present rate) the possible positions arising would be :—

1. Where after taking off all allowable deductions including the general exemption, £156, there is a taxable income, the system would have no application.
2. Where through losses of any kind, including failure to earn income, the income is reduced—
   (*a*) exactly to the amount of the general exemption, there would be no tax, and no loss to be carried forward ;
   (*b*) below the general exemption £156, but not below £1, the difference would be deemed a loss which may be carried forward, Example :— If the net income was £140, *i.e.*, £16 below the amount of the general exemption, there would be a " loss " of £16 which could be carried forward to be set off against the taxable income of the next year.
   (*c*) below zero by, say, £100, the loss to be carried forward would be £100, plus £156, or £256 in all.

If the taxpayer were entitled to an allowance for children of, say, £52, the above illustration would be altered merely by adding £52 to £156 where the latter figure is used.

28. It should, we think, be permissible for losses not extinguished by subsequent profits to be carried forward for a period of five years but not longer. This limitation will not affect the practical value of the allowance ; but we recommend that power be conferred upon the Commissioner to extend the time where in his opinion there are special circumstances justifying such extension. In cases where application is made for an extension of time, and the Commissioner decides against the applicant, the latter should have a right of appeal to the Board of Appeal recommended in Section IV. (Board of Appeal under the Income Tax Act).

29. The British Commission, while recommending abolition of the average system, recognised that consideration is necessary where losses occur. The British *Income Tax Act* 1918 contains a provision similar in effect to the provision of the Commonwealth Act under which losses occurring during the year which is the subject of assessment may be set off against the profits *of that year*. That provision, however, affords no adequate relief in cases where heavy losses occur in any one year which are not extinguished for two or more subsequent years. The British Commission, while recommending the continuance of the present provision with regard to the deduction of losses in respect of the year in which they occur, made a further recommendation that any balance of loss should (unless earlier liquidated by profits) be permitted to be carried forward for a period of six years. This period was chosen as corresponding with the period fixed under the Statute of Limitations.

30. In the United States a recent amendment of the Income Tax Law extends the allowance for losses incurred in the regular business of a taxpayer beyond the year in which the loss occurs. The effect of the amendment is stated by Montgomery (Income Tax Procedure 1919, p. 486) as follows :—

> " The 1918 Law provides that when the business of a taxpayer as ascertained for a taxable year beginning 1st November, 1918, 1st December, 1918, or 1st January, 1919, results in a net loss such net loss may be deducted from the net income of the next preceding taxable year, and the tax of such preceding year shall be redetermined and the balance due to the taxpayer as so ascertained shall be refunded. If the net loss is greater than the net income for the preceding year, the entire net income shall be used up and a refund made, and the balance of the loss not deducted may be carried over to the next succeeding taxable year. The losses so applicable to preceding or succeeding taxable years may be those incurred in the regular business of the taxpayer."

This is obviously a tentative and incomplete application of the sound principle of making allowance for losses.

31. In Queensland, the Governor's Speech at the Opening of Parliament in August, 1921, announced an intention to introduce a bill for the purpose of amending the Income Tax law to provide for the application of that principle to farmers. The latest official information on the subject received by the Commission is that the provisions of the Bill have not yet been finally settled, but it is probable that the benefit of the amendment of the law will be confined to farmers. The Commission does not know how the term " farmer " is to be defined.

32. The Report disapproves of the system of carrying forward of losses, and states objections which may be thus summarized :—

1. That it is not equitable ; that it is not general in application, and particularly that it affords no relief to a taxpayer whose income fluctuates, but who does not incur loss.
2. That it introduces a radical change of method and differentiates unduly between taxpayers.
3. That it cannot operate more frequently than losses occur.
4. That practically the only thing that can be urged in its favour is that it is simple to understand, but that " the handful of benefit of its supposed simplicity is hardly worth the holding" . . . and that with the proposed extension of the term " loss " to include any sum by which the taxpayer's income falls below the amount of the general exemption plus the allowance for children (if any), even the " minor merit of simplicity " vanishes.

33. It is obvious that a system dealing with actual losses cannot operate more frequently than such losses occur. The charge that the system is not general in its application is, of course, true to the extent that it does not affect incomes in which losses are not sustained, but one does not complain, for example, of the allowance for children that it confers no benefit upon a childless taxpayer.

34. It is true of an averaging system also that to many incomes (*i.e.* non-fluctuating incomes) it will have no practical application ; to many others a very slight application, while in numerous other cases its application may be to the pecuniary detriment of the taxpayer, a result which in no case follows the application of the system of carrying forward of losses.

35. It may be pointed out that our recommendation that losses should be defined as beginning as soon as the income falls below the amount of the general exemption plus the allowance for children (if any) will have the effect of causing the system to operate much more widely than is assumed in the Report, and of affording substantial relief to taxpayers of moderate though fluctuating incomes, whose transactions rarely, if ever, result in positive net loss.

36. The alleged inequity of the system of carrying forward of losses is illustrated in the Report (paras. 44–45) by two examples. The supposed inequity in the examples is one which would occur equally under an averaging system, and is due to the operation of graduated rates. The statement that the system in addition to being inequitable involves a radical change of method appears to us to be without foundation.

37. As to No. 4, whatever may be said or implied to the contrary, we consider the carrying forward of losses system, as recommended by us, is economically sound in principle, easy of comprehension, and will be found to be simple in practice. We regard its comparative simplicity as an additional merit which, independently of its capacity to afford substantial relief where losses are incurred, would be welcomed by that large body of taxpayers who place a high value on simplicity as an element of any taxation method.

EFFECT ON REVENUE.

38. While the effect on Revenue should not be the dominant factor in the appraisement of any proposed change of system having for its object a more equitable distribution of the burden of Taxation, it is an element which cannot be ignored in any estimate as to its practicability.

39. A careful scrutiny of all the figures available to us relating to both the Averaging and the Losses Systems revealed such conflicting results that we are led to the conclusion that any estimate we could make as to the Revenue effect of either system would be unreliable.

40. It is clear, however, that the adoption of either the Averaging System recommended in the Report, or the System of Carrying Forward of Losses, would involve a reduction in the total revenue derived from Income Tax, and it is equally clear from the numerous illustrative examples we have had under review that the revenue would suffer to a greater extent under the "Averaging System" than under the "Losses" System.

TAXABLE CAPACITY.

41. With regard to paragraphs 38 and 40 of the Report, in which a duality of purpose is attributed to the British system of averaging, and also a failure on the part of the British Commission to distinguish between the "basis of liability" and "measure of taxable capacity," in our opinion the averaging under the British system has always served one purpose and one purpose only, viz., the determination of taxable capacity or taxable income, which we regard as interchangeable terms. Under the British system, averaging has nothing to do with ascertaining the rate of tax. Once the figure of income to be taxed or, more shortly, the taxable income is determined by the averaging system, the legislative provisions fixing rates of tax (with which averaging has no connexion) automatically come into operation.

42. In the section of the report of the British Commission to which reference is made in paragraph 40 of the Report, that Commission had recommended the abandonment of averaging, and were discussing whether, on the single-year system, it was more desirable to take as the basis of liability the profits of the year of assessment or of the preceding year. For practical reasons they decided in favour of the latter, and added a recommendation as to the carrying forward of losses similar to that which we make.

43. We do not share the opinion of our colleagues that there was any failure on the part of the British Commission to distinguish between "basis of liability" and "measure of taxable capacity"; for the reasons that when "averaging" is logically applied "taxable capacity" is also the "basis of liability," and that under the single year system, with which that Commission was then dealing, no distinction between the two can be drawn, either in theory or practice. (See also para. 60.)

44. The method recommended in the Report, whatever may be said for it from a practical point of view, is, in our opinion, illogical inasmuch as it does not base the tax upon the ascertained average income, but applies the rate appropriate to that income to the income of the year. That rate may be very much higher or very much lower than the rate prescribed by the existing scale of graduation as appropriate to an income of the same amount as the income of the year.

GENERAL COMMENT AND CONCLUSIONS.

45. While the mode of averaging recommended in the Report would afford a useful measure of relief to taxpayers in certain circumstances, in our opinion it would in other circumstances operate unfairly and engender anew the sense of injustice which it is designed to eradicate.

46. It is to be regretted that this mode of averaging was introduced to the Commission only at the close of the inquiry. Consequently, it did not receive that careful consideration by many competent witnesses which was given to the mode of averaging first submitted, and to the method of carrying forward losses. As we have seen the chief proponents of the mode of averaging first submitted, who said that "the only remedy which will meet the case and create the least anomalies is to impose the tax *on the basis of the average income* gained over a number of years," were moved later on (presumably as a result of further examination and the criticism their scheme encountered) to propose this modification. **The new scheme is simply a different mode of averaging.** It is, in our opinion, an improvement upon the mode for which it was suggested as a substitute, since in some cases it reduces in scale the inequities which arise under this as well as under other modes of averaging. The "standard of perfection" in the view of the Report would be reached if a system produced an arithmetical identity between the total tax paid during a selected period on a fluctuating income and on a non-fluctuating income of the same total amount. The complaint is that a fluctuating income is excessively taxed in comparison with a non-fluctuating income, but the example in para. 15 on page 5 shows that, in certain circumstances, the mode of averaging recommended produces the opposite result, and causes a non-fluctuating income to pay much more than a fluctuating income of the same aggregate amount during the same period.

47. It has been shown previously that this mode of averaging, among other disadvantages and anomalies which attach to it, would in certain frequently-occurring circumstances (1) cause a taxpayer to pay more tax during a period of five years than he would pay under the present system; (2) cause a steady income to pay more tax than a fluctuating income of the same total amount; and (3) cause the position to arise that in effect a large amount of income would not enter into the fixing of rates with the consequence that the revenue may never receive its due share.

48. It has also been shown that, on the test laid down in the Report as that upon which all methods should be judged, that is by the degree of conformity of the amount of tax payable by a fluctuating income with that payable by a steady income, there is a mode of averaging (which has been considered and rejected by the Commission) but which under that test shows better results when applied to the twelve examples in the Majority Report than that given by the mode recommended.

49. The Report, paragraph 31, quotes Sir Josiah Stamp as in favour of an averaging system. Sir J. Stamp may, in our opinion, with greater weight, be cited against averaging, for, as a member of the British Royal Commission, he concurred in the recommendation for the abolition of averaging and the substitution of the system of carrying forward losses.

50. In a paragraph under the heading "Alleged Hardship" in the Report (page 24) the statement is made that—

> "While it was quite true that in the British averaging scheme undue generosity was extended to expanding incomes and undue hardship meted out to dwindling incomes, this was mainly due to the creation by the British system of averaging of a "Statutory Income" at variance with the true income (augmented or diminished by the position of its tapering parts). In the scheme now proposed, the tax is based on the actual income of the immediately preceding year, the rate only being fixed by the averaging period, and should it be proved, which is unlikely, that the rate is unduly inflated in any special and peculiar case, the remedy could be supplied by some provision on the lines of section 64 of the present Act. This contingency is so remote that, for practical purposes, its consideration beyond the mere mention can be disregarded, for in nearly all cases where a taxpayer has been enjoying a larger income in former years, any increment in rate consequent thereon when his income is lessened, seeing that such rate is applied solely to his actual income of the immediately preceding year, will not carry with it any sensible hardship."

51. The statement that the admitted injustices arising under the British averaging system are mainly due to the taxation being based upon the average income, and the implication that an alteration of the mode of averaging will greatly diminish the frequency of these injustices, seem to ignore what in our opinion is the fact that the mode recommended will inevitably cause injustices similar in type and probably in volume with the sole difference that, in some instances, they will be reduced in scale. With a "dwindling income," or more certainly with a sharply-reduced income, a taxpayer may find himself liable to pay tax on income of a given year at a rate many times the rate appropriate to his actual income. He may find too—as the illustration in para. 20 shows—that during a cycle of five years he will be called on to pay a greater amount of tax than he would pay under the present law. In such cases any benefit he may have derived from the system in years of expanding income will probably be forgotten, and the sense of injustice that will inevitably arise in his mind is not likely to be allayed by the assurance that, "seeing that such rate is applied solely to his actual income of the immediately preceding year, [it] will not carry with it any sensible hardship."

52. In seeking to improve our taxation system, it is desirable that any new method adopted should be simple, certain in its operation, and, wherever applied, should be manifestly just. In our opinion no averaging system adequately responds to these tests.

53. In the relations it creates between the revenue and the taxpayers (apart from the question of any reduction of receipts due to its adoption) any averaging system would operate in a manner contrary both to the general public interest and to the interest of individual taxpayers. If a period of slackness or decline is followed by one of growing wealth and prosperity, the revenue lags behind as to its just share, and the taxpayers, who in such a time of quickly advancing gains and general confidence could most easily support the necessary burdens of taxation, find those burdens lightened by the effect of the previous years, while they will have to bear the heaviest load in a period of shrinking profits and difficult financing.

REASONS FOR PREFERENCE FOR CARRYING FORWARD OF LOSSES SYSTEM.

54. We regret having to differ from our colleagues in our conclusions and recommendation on this subject, but the cumulative force of the objections we see to the scheme of averaging recommended by them compels us to seek an alternative. The alternative to which we turn is the system of carrying forward any balance of loss from one year to be used as a set off against tax of subsequent years until extinguished by future profits (*see* para. 29 *et seq.*).

55. We question the accuracy and soundness of the assumption which is fundamental to the mode of averaging recommended in the Report, viz., that for practical purposes true "taxable capacity" is best found in the average income over a period of five years. We regard the average income over a period of five years as an arbitrary standard of taxable capacity, not demonstrated to be an accurate standard suitable for general application. Our conception of taxable capacity is that on the whole it is likely to be more accurately reflected in the "annual net income." We consider that a profit resulting from any one year's transactions should not, for the purpose of taxation, be regarded as income for that year till it is subjected to a deduction of any unextinguished loss incurred in a previous year. Both equity and sound practice demand that the profit of any year should first be applied in extinguishing any loss carried forward from a previous year's transactions. We apply the term "annual net income" to the resulting balance of profit, and this we consider should constitute taxable income. This view is clearly implied in the recommendation of the British Commission.

56. The method of carrying forward of losses in the form we recommend insures that no taxpayer will be called upon to pay tax on an amount in excess of his annual net income (as defined above) over a period long enough to cover any probable succession of losses. (This suggestion is also in harmony with the view of the British Commission.) The annual net income (determined after the absorption of any previous losses incurred within five years) is taxed at the rate applicable under the current scale to that annual net income. The full weight of whatever scale of graduation is in force falls therefore where it is designed to fall, on the net annual income of the subject, which in our opinion is invariably the best index of his true taxable capacity.

57. If complete equity is ever attained in a taxation system, in our opinion it will not be through an attempt to achieve mechanical identity of tax payment, but through a just estimate of the many factors which constitute the basis of accurate comparison.

58. The system of carrying forward of losses, though more limited in scope than the system of averaging, is free from the complexities and disappointing inequities which characterize that system. It operates, as indicated by the words used to describe it, upon incomes in which the fluctuations extend to actual net losses. Within that area its action is simple, just, beneficial to the taxpayer, and involves no unfairness to the revenue. The evidence shows that there is a large body of opinion among primary producers, and other sections of the taxpaying community, which prefers this system to a system of averaging. It gives full relief up to the point where public opinion as expressed in evidence unanimously agrees that relief is justly due, that is where actual losses occur, and we are convinced that, in practice, it would give more widespread satisfaction than the averaging system recommended in the Report.

59. The system of carrying forward of losses—

(*a*) Would supply an element of equity which is lacking in the existing system, as it makes full allowance for the losses which that system ignores.

(*b*) Would not act to the pecuniary detriment of the taxpayer (as any averaging system frequently would), while, at the same time, it would secure to the revenue its just share.

(*c*) Is much simpler than the averaging system, and consequently will be understood by a much larger body of taxpayers.

(*d*) Would, as compared with an averaging system, involve much less trouble to taxpayers in checking their assessments.

(*e*) Would free taxpayers from payment of tax or reduce the payments during the years of greatest stress.

(*f*) Is in consonance with recognised business and accountancy methods, and would be applicable without any change of method to all classes of taxpayers.

(*g*) Would be much less difficult and expensive in administration than an averaging system. Official evidence showed that, for the first few years at least, there would be very great difficulty in obtaining the additional competent officers who would be required if an averaging system were adopted.

(*h*) Would operate normally from the first year. The averaging system as recommended in the Report does not operate normally for five years.

RECOMMENDATION.

60. We recommend—

1. That the Income Tax Assessment Act be amended so as to incorporate in the determination of "taxable income" the system of carrying forward of losses up to a period of five years, unless earlier extinguished by subsequent profits.

2. That, for the purposes of the system, the meaning of the term "loss" be extended so that a taxpayer should be entitled to carry forward (as a loss) any sum by which his income in any year falls below the amount of general exemption plus the allowance for children (if any) to which he may be entitled.

(Signed) W. WARREN KERR
S. MILLS.
M. B. DUFFY.

SECTION 1.

THE GIVING TO PRIMARY PRODUCERS OF SPECIAL CONSIDERATION AS REGARDS THE ASSESSMENT OF INCOME TAX, PARTICULARLY IN RELATION TO LOSSES RESULTING FROM ADVERSE WEATHER CONDITIONS.

SUPPLEMENTARY STATEMENT BY MAJORITY COMMISSIONERS.

The members of the Commission who support unreservedly this section of the Commission's Report, cordially welcome criticism of the recommendations made by them for placing the system of the Federal Income Tax Law upon a sound and equitable basis, and as they submit their own so would they have left untouched the Minority's views, to run the gauntlet of public examination; but considering the very important interests involved, and being sensible of their duty to the general public who have not the opportunity of reading in full the evidence submitted, and will therefore expect to be fully informed as to what bearing the material used by the Minority has on the matter in question, they feel reluctantly compelled to issue a statement supplementary to and corrective of the "Statement and Recommendation of Dissentient Commissioners."

The word "Reservation" in this supplementary statement means the "Statement and Recommendation of Dissentient Commissioners"

"Representative Evidence."

2. In the first paragraph of the Reservation are quoted certain figures, but as they are of most meagre description and do not convey any substantial evidence, we feel that more information is necessary, and venture to supplement them by submitting a table showing the calculations of tax under a variety of methods and over an extended period, using for the purpose the case referred to by the Minority.

TABLE A—OPERATIONS OF A TAXPAYER, as submitted by a witness, showing how same would be taxed under present and recommended methods, viz.:—

In column E, the method recommended by the Commission.

In column F, the averaging method with allowance for suspense credits.

In column H, the method of the present Federal Income Tax Act.

In column I, the "carrying forward of losses" method.

In column J, the method of the British Act (on a five years average).

A.	B.		C.	D.	E.	F.	G.	H.	I.	J.
Year.	Taxable Income for the Year.	Total Income for the Five Years (or less) to Date.	Average Income of Five Years, (or less) — Taxable Capacity.	Recommended Averaging Method. Rate of Tax Applicable to average Income (c).	Recommended Averaging Method. Amount of Tax on Taxable Income B. × D.	Suspense Credits.	Present Federal Method. Rate of Tax Applicable to Income B.	Present Federal Method. Tax on Taxable Income B. × G.	Carrying Forward of Losses Method.	Method of British Act (5 years).
	£	£	£		£	£		£	£	£
1 ..	24,105	24,015	24,015	86·9857	8,704	..	86·9857	8,704	8,704	8,704
2 ..	28,805	52,820	26,410	88·3812	10,608	..	89·5448	10,747	10,747	9,726
3 ..	Loss 34,646	18,174	6,058	43·8805	..	6,335	..	..	..	1,108
4 ..	Loss 67,255	Nil	Nil	..	..	..	..	..	..	..
5 ..	4,163	Nil	Nil	..	..	..	31·7554	551	..	..
6 ..	55,531	Nil	Nil	..	..	..	95·7197	22,148	..	—
7 ..	45,835	3,628	726	9·7640	1,865	..	94·3118	18,012	427	30
8 ..	24,015	62,289	12,460	72·7601	7,275	..	86·9857	8,704	8,704	3,775
9 ..	28,805	15,8349	31,670	90·7054	10,887	..	89·5448	10,747	10,747	11,969
10 ..	Loss 34,646	116,540	23,908	86·9168	..	12,547	..	..	..	8,658
11 ..	Loss 67,255	Nil	Nil	..	..	..	..	..	..	..
12 ..	4,163	Nil	Nil	..	..	..	31·7554	551	..	..
13 ..	55,511	Nil	Nil	..	..	..	95·7197	22,148	..	—
14 ..	45,835	3,628	726	9·7640	1,865	..	94·3118	18,012	427	30
15 ..	24,015	62,289	12,460	72·7601	7,275	..	86·9857	8,704	8,704	3,775
16 ..	28,805	158,349	31,670	90·7054	10,887	..	89·5448	10,747	10,747	11,969
17 ..	Loss 34,646	11,9540	23,908	86·9168	..	12,547	..	..	..	8,658
18 ..	Loss 67,255	Nil	Nil	..	..	..	..	..	..	..
19 ..	4,163	Nil	Nil	..	..	..	31·7554	551	..	..
20 ..	55,511	Nil	Nil	..	..	..	95·7197	22,148	..	..
21 ..	45,835	3,628	726	9·7640	1,865	..	94·3118	18,012	427	30
	..	..	..	..	61,231	31,429	..	180,486	59,634	68,432

3. It will be noted that under the system of the British Act, there would fall to be paid in the fourth and eleventh years taxes of £1,108 and £8,658, notwithstanding that heavy losses had been incurred in the immediately preceding years—the third and tenth. In the method recommended by your Commissioners no such conjunction could take place. A year of loss always exempts the following year from payment of tax. Whatever comments may apply to the British method of averaging, it cannot be said of the method recommended by your Commissioners that "under the latter system a heavy tax (£8,658) would have been paid in respect of a year of severe loss, and during a year of much more severe loss." Under the method recommended by your Commissioners, when there is no income in any year there is no Income Tax in the following year.

This is one of the important improvements which the method recommended by your Commissioners has over the British method. The method recommended should be clearly distinguished from other averaging methods, to which reference is frequently made in the Reservation. Many of these references do *not* apply to the method recommended by your Commissioners.

That the working may be closely scanned it has been carried out over three periods to 21 years. The income during the period has averaged £8,064 yearly, on which the Federal Income Tax at present rates would be £1,900 per annum.

4. To further assist comparison we insert another table (B) in which are shown the progressive aggregate amounts payable in tax by the taxpayer referred to in table A under each of the contrasted methods up to the end of each year, so that running the eye along the line one can compare exactly one method with another at any given date; the several methods are those described in paragraph 70 of our Report.

TABLE B: TOTAL TAX AS PAYABLE IN RESPECT OF INCOME UP TO END OF EACH YEAR UNDER CONTRASTED METHODS—

Years.	S.I.	A.M.S.	R.A.M.	C.F.L.	P.F.M.	British Method.
	£	£	£	£	£	£
1	1,900	8,704	8,704	8,704	8,704	8,704
2	3,800	19,312	19,312	19,451	19,451	18,430
3	5,700	19,312	19,312	19,451	19,451	19,538
4	7,600	19,312	19,312	19,451	19,451	19,538
5	9,500	19,312	19,312	19,451	20,002	19,538
6	11,399	19,312	19,312	19,451	42,150	19,538
7	13,299	19,312	21,177	19,878	60,162	19,568
8	15,199	22,117	28,452	19,878	68,866	23,343
9	17,099	33,004	39,339	28,582	79,613	35,312
10	18,999	33,004	39,339	39,329	79,613	43,970
11	20,899	33,004	33,339	39,329	79,613	43,970
12	23,799	33,004	39,339	39,329	80,164	43,970
13	24,699	33,004	39,339	39,329	102,312	43,970
14	26,599	33,004	41,204	39,756	120,324	44,009
15	28,499	33,004	48,479	48,460	129,028	47,775
16	30,398	40,484	59,366	59,207	139,775	59,744
17	32,298	40,484	59,366	59,207	139,775	68,402
18	34,198	40,484	59,366	59,207	139,775	68,402
19	36,098	40,484	59,366	59,207	140,326	68,402
20	37,998	40,484	59,366	59,207	162,474	68,402
21	39,898	40,484	61,231	59,634	180,486	68,432

5. This is a very extreme and exceptional case, so much so that a witness—a pastoralist of wide experience—to whom it was shown stated it might be excluded from consideration because of its exceptional character. It is exceptional not only in regard to the extreme range of its violent fluctuations but also that it is an example of the very rare case in which the method of carrying forward of losses is more favourable to the taxpayer than the more equitable and generally applicable method recommended by your Commissioners. Incidentally table "A" throws light on the proper treatment when a quinquennium of average loss occurs.

6. Taxation is not an abstract science but an art of practical importance in the affairs of life, and however interesting it may be to the doctrinaire to theorize on exceptional cases, the proper test of a system of taxation is its behaviour when applied in practice to the experience of every-day life. The Reservation does not contain or discuss a single such case. Of the three detailed examples it refers to, one only (the first) is actual, the other two are hypothetical—and all are out of the current of general experience. There were submitted to the Commission in evidence from 130 to 150 examples of the actual operations of different taxpayers, extending over various periods up to fifteen years. Yet all these—with the solitary exception of one exceptional case—are thrust aside and hypothetical cases of unusual character substituted.

7. The second example (paragraph 11) will be discussed under the heading Averaging (see paragraph 21 of this Statement).

8. Criticism of the third example in paragraph 16 of the Reservation has been anticipated in paragraphs 120 and 123 of our Report in discussing a case which conforms to reasonable experience. This claim cannot be sustained on behalf of the case in paragraph 16 of the Reservation, which would instance as an ordinary occurrence a taxpayer leaping at a bound from no income at all to the dazzling splendor of £10,000 a year. We are only concerned with practical business affairs. If such a case should occur, and if out of an income of £22,000 he has to pay £5,079 in tax, very little sympathy need be wasted on the recipient, nor need equitable treatment be denied to other taxpayers in order to protect this brilliant sybarite. The taxation of the ordinary trader who strikes a particularly good year is equitably provided for under the averaging method recommended by us (see paragraphs 120 to 123 of our Report).

9. It is beyond our function to suggest how the Minority should present their views, but seeing that the complaint of a large section of the community is against the incidence of the present Federal Taxation Laws, what one would naturally look for is a comparison between any method suggested and the method which it is intended to displace. In all the examples given in the main Report opportunity was taken to compare suggested schemes with the method now in use so that the whole position could be intelligently scanned. The results of the British system were not tabulated, though each example submitted in the table in paragraph 75 of your Commissioners' Report had been worked out on that system. The divergence between the British method and the tax on a steady income is fractionally less than the divergence between the tax on a steady income and the method recommended by your Commissioners, but it is greater than that between a steady income and the A.M.S. method (which for reasons stated in paragraph 75 we do not recommend). The chief feature of the British scheme, is that when applied to actual as against hypothetical cases the taxes payable under it would in the majority be less than those payable by steady incomes. Applied to the twelve examples summarized at the end of paragraph 75 of our Report, the results are—

Tax Calculated on—	Total amount of Tax.	Relative percentage.	Divergence from Tax on Steady Income.
	£ s. d.		
Steady Income	46,612 8 10	100	Nil
Method of British Act	43,967 15 3	94·33	− 5·67
A.M.S. Method	47,576 0 7	102·07	+ 2·07
R.A.M. Method	49,733 12 1	106·70	+ 6·70
C.F.L. Method	62,968 6 10	135·09	+ 35·09
P.F.M. Method	69,089 6 2	148·22	+ 48·22

10. Examples A and D on page 18 exhibit that under some circumstances the total tax on the R.A.M. method may for a short time be slightly less than that on a steady income, but had this effect been generally characteristic of it, the method recommended would not have been presented by your Commissioners as worthy of adoption. The wide divergence between the carrying forward of losses method and the averaging methods which precede it in the above table will not escape notice. We refrain from commenting further on this aspect of paragraphs 18 and 19 of the Minority's Reservation.

Taxable Capacity.

11. "Taxable capacity and taxable income . . . . we (the Minority) regard as interchangeable terms." On the basis of their own unsupported opinion that "taxable capacity" and "taxable income" are synonyms the Minority seek to overthrow the sustained argument of the main report, but offer not a single fact or argument to confirm their bald assertion that "averaging under the British system has always served one purpose and one purpose only." Questions of this character cannot be settled by the simple *ipse dixit* of the Minority, when history testifies to the contrary. Explaining the function of averaging under the British Act, Sir Henry Primrose, late Chairman of the Board of Inland Revenue, wrote—"The system of averaging is merely an incident in machinery devised for the purpose of determining a figure of income to be taxed," that is, to determine the assumed figure of income of the then current year to be taxed as "statutory income" tentatively, and subject to subsequent adjustment. When this was written—nearly 20 years ago—the British Act contained no recognised scheme of graduation. There were a few exemptions and abatements corresponding in principle and effect to the general

exemptions of the Federal Act, but graduation as understood in taxation science was then absent from the British Act. The position is expressed in the following extract from an official memorandum issued in 1919 by the Board of Inland Revenue :—

> Although all these exemptions and partial exemptions of small incomes are really a form of graduation, they were not generally recognised to be so, but were regarded as innocuous even by the strongest opponents of that form of graduation which is achieved by charging a rate higher than the normal rate on the possessors of large incomes.

It was subsequent to the issue of Sir Henry's opinion that, in 1906, a new departure having been suggested, a Select Committee of the House of Commons was " appointed to inquire into and report upon the practicability of graduating the Income Tax and of differentiating, for the purpose of the tax, between permanent and precarious incomes." Not until 1909, when legislative effect was given in part to the recommendations of that Committee, did a scheme of graduation in a somewhat embryonic stage enter the British Act. The principle has since been developed. That " averaging under the British System has always served one purpose, and one purpose only " might be true (though he did not say so) when Sir Henry Primrose wrote nearly twenty years ago; it is *not* true under the conditions altered by Parliament in 1909 and existing to-day.

12. In these earlier years (that is prior to 1909) " averaging had nothing to do with ascertaining the rate of tax," for the simple reason that with the exception of ten years (1853–1863) there had been in force throughout the whole career of the British tax *one flat rate only* in each year, applicable to all taxable incomes, high or low. But with the entrance of graduation in a rudimentary form in 1909 and its substantial extension in 1914, averaging entered upon a new mission, and in the numerous cases to which it applies, it now determines the grade or the taxable capacity of the taxpayer, and by this in turn is ascertained (by reference to the scale for the time being in force) the rate of tax payable by him. Under the now existing conditions averaging *has* " to do with ascertaining the rate of tax."

13. It is no part of an averaging system to determine the rates of tax: that devolves upon the Legislature, but, this fixed, it is the function of an averaging system to determine the average income over such period as may be laid down by law so that there may be ascertained the grade to which the taxpayer belongs, that is, his taxable capacity. Whether the figure (the average income) which determines his taxable capacity shall also be treated as the basis of liability is quite another question for determination by the Legislature. It may or it may not be the basis, according as the law prescribes, but clearly the two things are not identical, and they should in the study of a taxing system and its incidence be distinguished. That the British Commission failed in their deliverance to distinguish between the two can the more easily be understood when there are found here three Commissioners who, after the distinction has been pointed out to them, declare that " taxable capacity " and " basis of liability " are one and the same thing, and " no distinction can be drawn between the two in either theory or practice." Yet they are just as distinct from one another as the operation of ascertaining the purchasing power of the sovereign is distinct from the operation of applying the Statistician's results to regulate the wages payable to labour.

Principle of Equity in Taxation.

14. From several references in the Reservation it appears that the basic principles on which the recommendation of your Commissioners rests have not been clearly comprehended by its opponents. *Vide* the following :—

> Paragraph 19.—" It is, we submit, clear that the Report, in adopting comparison with a steady income as the supreme test of any method, has chosen a standard much too rigid and narrow."
>
> Paragraph 51.—Where the Minority fail to express the vital difference between other methods of averaging under which the basis of liability is the average income of a series of years and the method recommended by your Commissioners under which the basis of liability is the actual income of the year immediately preceding the year of assessment.
>
> Paragraph 55.—" Our conception of taxable capacity is that on the whole it is likely to be more accurately expressed in the annual net income " than in " the average income over a period of five years."
>
> Paragraph 56.—" The net annual income, in our opinion, is invariably the best index of true taxable capacity."
>
> Paragraph 57.—" If complete equity is ever attained in a taxation system, it will not be through an attempt to achieve mechanical identity of tax payment, but through a just estimate of the many factors which constitute the basis of accurate comparison."

15. Arrested by the closing sentence, one may ask where in the method of "carrying forward of losses" is to be found any estimate, just or unjust, of "the many factors which constitute the basis of accurate comparison"? As the Reservation offers no reply, one is emboldened to ask further, whether some of these "many factors," which the Minority do not even name, should not be dealt with when the questions of exemptions, differentiation of source, and graduation of rates are under discussion?

16. These statements impel us to state briefly the principles for which your Commissioners contend, and which find expression in our recommendation.

17. Regarding any system of graduated income tax, three postulates meet general acceptance—

(1) Any system of averaging that covers in one span the whole taxing that is, the whole income-earning life of a taxpayer will, *ceteris paribus*, disclose his true taxable capacity, and will by reference to the rates and regulations ruling for the time being produce equality of tax payment as between one whose income fluctuates and one whose income is steady.

(2) Any shortening of the period of time from the whole taxing life will involve a departure from true taxable capacity and produce divergence in tax payment as between a fluctuating income and a steady income, making the payment in some cases greater, in others less. The shorter the period the greater will the divergence be.

(3) Assuming one-year periods to be the shortest ever so used, the period of time (one year) adopted under the present Federal method involves the greatest departure from true taxable capacity and produces the greatest divergence possible in tax payment as between a fluctuating income and a steady income.

And, as a corollary—

Any lengthening of the period beyond the one-year period adopted under the present Federal method will involve closer approach to true taxable capacity and reduce the divergence in tax payment as between a fluctuating income and a steady income. The longer the period the less will the divergence be.

18. Excluding shorter periods and the arbitrary exactions of despots, the most harsh and inequitable scheme of income taxation as to time range which could be devised would be one in which each day was separated from every other day, and tax demanded on the full profits of the most profitable days without any allowance for the deficiencies of neighbouring days. The scheme would, for other reasons, be impracticable, but the point to be stressed is its inherent injustice. Yet "once the system of graduation is admitted as being generally the most equitable," such a tax as this would be declared by the Minority to be "certain in its operation, and wherever applied manifestly just." Comment is superfluous. Such a tax, whatever be its scheme of differentiation or graduation, could not reflect true taxable capacity; it could not be just.

19. Mitigation would be found in stretching the period to a week, for the deficiency of Monday could then be set off against the larger profit of Tuesday and tax be levied on the free surplus only—in a very restricted way deficits would be absorbed in profits. Extension to a month, a quarter, a year, would at each remove be without any possible doubt an improvement, an alleviation of hardship, and a nearer approach to justice. But why at that point stop progress to that desirable goal? Why not a period of three years, five, ten years? Why not the whole economic and income-receiving life of the citizen? The most accurate valuation of the taxable capacity of the citizen, the most accurate standard of his ability to pay income tax, is the income of the whole span of income-earning life, finally adjusted by revision and readjustment of the whole period when all the facts were known. Surely the Minority will concede that this is not "a standard much too rigid and narrow," particularly if the "many factors (whatever they be) which constitute the basis of accurate comparison" are brought to bear upon it. For practical reasons this is as unworkable on the one hand as a tax on daily profits would be unjust on the other.

20. In Australia there has operated for years a system of taxing on graduated scales the income of each year without regard to adjoining years, and from it has sprung a crop of injustice which, supinely tolerated when rates were comparatively low, has now stirred the sufferers into protest. The intolerable burden of a tax, which in a specially profitable year taxes every pound at a high rate without any allowance whatever for the greatly reduced incomes or positive losses of the adjacent years results in harsh inequalities when compared with the milder treatment meted out to steady unfluctuating incomes of equal volume. Yet the Minority write in paragraph 56 "The net annual income in our opinion is invariably the best index of true taxable capacity." On the injustice of this condition of things our Report furnished several

examples, examples which could be multiplied many times over, for, with rare exceptions, the incomes of all taxpayers fluctuate, some mildly, some violently. Even the Minority admit this. But for a "disease bred in the bone" of an unjust system the "carrying forward of losses" system can offer no treatment more efficacious than the removing of the eruption which occasionally appears on the surface of one case in a hundred, while the seat of the evil is untouched in all. The cause, well understood, demands not occasional superficial treatment as proposed by the Minority, but an effective preventive cure of general application to all labouring under its malign touch. The tax should be levied on the nearest approach to a non-fluctuating income that is ascertainable in a practical way and in reasonable time—that is, on "a long time basis, long enough to give a fair average indication of means." Ten years appears impracticable. Shall we say seven, as in the United Kingdom in certain cases, or three as in others? Or take the happy mean, five—a period sufficient to include a fair range of the varying vicissitudes of erratic seasons, which are a feature of Australian conditions and well within the control of reasonable administrative machinery? As a step towards ideal justice, it is certainly a distinct advance on the existing quarantining of each year from its neighbours, and would afford much-needed and general relief to taxpayers. We have, we think, proved—that the averaging method over a period of five years as proposed by your Commissioners is the nearest approach to equity which recognition of practical necessities enables us in the circumstances to recommend.

AVERAGING.

21. To expose the alleged delusive pretensions of a system of averaging the Minority have prepared a special case—none of the about 150 actual cases submitted to the Commission being deemed suitable—and on the strength of its inconclusive results found a number of interesting charges. (*See* paragraphs 12 to 15 of the Reservation.)

22. From this special case losses were purposely excluded by the Minority, and the discovery is made by them that "the total of the averages will rarely correspond with the total income of the taxpayer." Whoever expected that the total of any averages would agree with the total of the original numbers averaged? It never did, and never can. The average knowledge of any body is not the same as the total knowledge of all its members. "Will *rarely* correspond," they write. "Will *never* correspond" would be more accurate. They have also discovered that the averages are always greater or less than the income of the latest year. What else could be expected except when by some chance coincidence the last figure happens also to be the exact mean of the five? That the average shall coincide with the final figure in all cases would be possible only in the case of an absolutely steady income, and the very object of averaging is to correct the inequalities of fluctuating incomes. Why expect in fluctuating figures conditions which can exist in the case of steady unchanging figures only?

23. When, however, from these discoveries the Minority conclude "the above figures indicate that over the period shown, £24,942 of income have in effect not entered into the fixing of the rate of tax" they are seriously astray. Each and every figure of average is accurate and responds to test. Perfect in all their parts, the averages are perfect as a whole. This may be more clearly seen if the figures of the example in Paragraph 11 of the Reservation be marshalled, thus:—

Years.	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
(1)	..	..	..	..	3,943	4,499	4,618	5,819	4,701	6,729
(2)	..	..	..	3,943	4,499	4,618	5,819	4,701	6,729	5,387
(3)	..	..	3,943	4,499	4,618	5,819	4,701	6,729	5,387	21,983
(4)	..	3,943	4,499	4,618	5,819	4,701	6,729	5,387	21,983	7,295
(5)	3,943	4,199	4,618	5,819	4,701	6,729	5,387	21,983	7,295	23,834
Totals	3,943	8,442	13,060	18,879	23,580	26,366	27,254	44,619	46,095	65,228
Average Taxable Capacity	3,943	4,221	4,353	4,720	4,716	5,273	5,451	8,924	9,219	13,046

The rate of tax appropriate to the taxable capacity ascertained by averaging as above, expressed in pence per £1, viz:—

30·34 32·13 32·97 35·32 35·29 38·86 40·00 60·96 62·29 74·05

is always applied to the actual taxable income as shown in line (5). The Statement of the Minority in paragraph 47 of the Reservation that "this mode of averaging would cause the position to arise that in effect a large amount of income would not enter into the fixing of rates with the consequence that the revenue may never receive its due share" is disproved by the above table. it will be seen that each year's income throws its full weight into each of the five years during

which it operates. In the method recommended by your Commissioners every pound of income within the operative period, be it quinquennial or shorter, enters into the fixing of the rate of tax. This holds true at each successive stage, and it holds true of every figure of average. Not one pound of income earned has failed to contribute its full weight and effect to the fixing of the average, by which the rate of tax is ascertained, and it is also true that on the rate thus ascertained in the method recommended by your Commissioners every pound of income pays immediately the full quota of tax chargeable under the taxing Act. Scrutiny of the example in paragraph 15 of the Reservation shows that tax is payable on the whole of the actual income (£88,808), and not, as inferred in the comments of the Minority, on the total of the average (£63,866) only. Remembering that the tax is founded on the principle of ability to pay as expressed in a suitable scale of graduated rates and that every taxpayer is required to pay in accordance with such ability, the revenue is never behind and never ahead; it collects every year its true, full, and correct quota. For the statement that averaging is not fair between individual taxpayers there is not a vestige of proof. No practicable scheme has yet been found which is more equitable as between individual taxpayers, and as between the individual taxpayer and the community—the public revenue.

24. Returning to the subject in paragraph 46. the Minority declare, "the new scheme is simply a different mode of averaging." This, however, had previously found expression in paragraph 60 of our Report. The method recommended by your Commissioners was never submitted as anything other than an improvement on the mode of the British Act. When in paragraph 3 the Minority write, "in no State, with the doubtful exception of New South Wales, did a system of averaging find acceptance with the State Commissioners of Taxation," the reader should have been informed that of these official witnesses one only had heard of the method recommended by your Commissioners while all disclaimed intimate knowledge of the British method or its operation, and also that three witnesses who had formerly held—and resigned from—office as Deputy Commissioners under the Federal Act were each emphatic in recommending an averaging system as necessary. Much more to the point is the opinion of Sir Timothy A. Coghlan, for twenty years Government Statistician and subsequently Agent-General for New South Wales, who was employed by Sir George Reid's Government to draw up a scheme of Land and Income Tax, and who prepared the Bill which is the basis of the present law in that State, and on which the Acts of some other States have been modelled. An author of world-wide fame and experienced in taxation, he had intimate knowledge of both the Australian and the British systems, when he stated in evidence before a Select Committee in 1906, "It is a defect in the Australian Income Tax Acts that they have not a system of averaging." The defect is remedied in the method recommended by your Commissioners, which adopts the wholesome elements of the British system, with careful eradication of the faults which have clustered round it.

Carrying Forward of Losses.

25 We are in agreement with the Minority when, in paragraph 23 of the Reservation, describing the purpose and limited scope of their method, they write:—"The purpose of the method of carrying forward losses which we recommend is to preserve equity *below the line where taxation begins.*" But, taxpayers ask, what useful purpose in any scheme of taxation can be served by a method which operates only "*below* the line where taxation begins"? Even its sponsors have to admit (paragraph 27) that "where there is a taxable income the carrying forward of losses system would have no application"—that is, it would have no application to about ninety-nine cases out of a hundred, and only a very limited application to the hundredth. Then, reaching up to the ideal expressed in paragraph 52, "any new method *wherever applied* should be manifestly just," they, in paragraph 58, claim, "*within that area* its action is simple, just, and beneficial to the taxpayer," and "free from the disappointing inequities which characterize the averaging system." What have the ninety and nine, excluded from its parsimonious benefits, to say to that? Let them rest soothed and contented with the assurance of the Minority—for this is the only benefit their scheme claims to offer them—"we are convinced that in practice it will give much more widespread satisfaction than the averaging system recommended in the Report." Thus commended and thus condemned, it would be mere waste of time to disprove in detail the claims made for the "carrying forward of losses" in paragraphs 58 and 59 of the Reservation.

TAMIL NADU ARCHIVES LIBRARY

JOHN JOLLY.
J. G. FARLEIGH.
W. T. MISSINGHAM.
JOHN THOMSON.

APPENDICES.

ROYAL COMMISSION ON TAXATION.

APPENDIX No. 1.

LIST OF WITNESSES AND ASSOCIATIONS, ETC., REPRESENTED BY WITNESSES.

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
A.							
ACCOUNTANTS, Australasian Corporation of Public	239	989	..	125	..	..	..
,, Federal Institute of	..	2098	..	..	..	..	..
,, Incorporated Institute of, Commonwealth of Australia	..	1552, 3938	..	..	..	..	1
,, Institute of, in South Australia	..	..	..	369	..	..	..
,, Western Australian Institute of ..	..	..	..	..	433	..	..
ADCOCK, William Edward	..	2354	..	..	..	..	..
AIKINS, William Alexander	..	2757	..	..	..	..	..
ALLWORTH and Sons, W. F.	11, 121, 133, 152	..	..	..	..	..	..
ALSTON, Thomas Cauvine	..	1113	..	..	..	..	..
ANNELLS, George Richard	..	..	..	300	..	..	..
ARTHUR, Dr. Richard, M.L.A.	750	..	..	..	..	..	..
ASPINALL, Joseph William	..	540	..	..	..	..	..
ASSOCIATION, Australian Mines and Metals ..	..	989, 1202	..	..	..	..	..
,, Australian, of British Manufacturers	659	..	..	..	..	..	..
,, Australian Sugar Producers ..	..	..	460	..	..	..	..
,, Boot and Shoe Retailers, of Victoria	..	3318	..	..	..	..	..
,, Boot Manufacturers	..	1304	..	..	..	..	..
,, Central Fruit-growers	..	540	..	..	..	..	..
,, Central and Northern Graziers ..	..	..	7	..	..	..	..
,, Co-operative Butter Factories ..	..	887, 898	..	..	..	..	..
,, Farmers and Settlers, of New South Wales	3	..	..	..	..	..	..
,, Federal Life Insurance Offices ..	679	..	..	..	..	..	..
,, Federated Caterers, of Victoria ..	..	2311	..	..	..	..	..
,, Federated Graziers, of Australia ..	391	2368, 3829	..	..	..	..	..
,, Graziers	330	..	..	..	..	..	..
,, Grocers, of Victoria	..	582	..	..	..	..	..
,, Melbourne and Suburban Retail Fruiterers	..	549	..	..	..	..	..
,, Melbourne Warehousemens ..	..	1974, 3527	..	..	..	..	..
,, Metropolitan Fruit Growers ..	..	540	..	..	..	..	..
,, Mining, of Western Australia ..	..	..	..	..	174	..	..
,, Municipal of Victoria	..	2780	..	..	..	..	..
,, Pastoralists, of Western Australia	..	..	..	..	759, 806	..	..
,, Primary Producers ..	..	..	..	..	883	..	..
,, Stock-owners	..	..	..	457	..	..	..
,, Stock-owners, of New South Wales	83	..	..	..	..	..	..
,, Sydney and Suburban Timber Merchants	791A	..	..	..	..	..	..
,, Tasmanian Farmers and Stock-owners	..	..	..	..	..	..	303
,, Taxpayers, of Queensland ..	..	..	5, 752	..	..	..	..
,, Taxpayers, of Victoria	..	478	..	..	..	..	..
,, Taxpayers, of Western Australia	..	..	..	..	4	..	..
,, Tweed River Fruit-growers ..	..	..	486	..	..	..	..
,, United Cane-growers	..	..	340	..	..	..	..
,, Victorian Hardware	..	1974, 3527	..	..	..	..	..
,, Victorian Master Drapers ..	..	2331	..	..	..	..	..
,, Victorian Merchants	..	1974, 3527	..	..	..	..	..
,, Victorian Milk Producers and Retail Dairymens	..	1401	..	..	..	..	..
,, Victorian Mill-owners	..	2095	..	..	..	..	..
,, Victorian Storekeepers and Traders	..	2331	..	..	..	..	..
ATKINSON, Professor Meredith, M.A.	..	64, 839	..	..	..	..	..
AUSTRALASIAN Corporation of Public Accountants	239	989	..	125	..	..	..
AUSTRALIAN Association of British Manufacturers	659	..	..	..	..	..	..
,, Industries Protection League ..	..	775	..	..	..	..	..
,, Labour Party	..	3404	..	..	..	..	..
,, Mercantile Land and Finance Co. Ltd.	..	3265, 3327	..	..	..	..	..
,, Mines and Metals Association ..	..	989	..	..	..	..	..
,, Sugar Producers Association Ltd. ..	..	..	460	..	..	..	..

* Evidence not printed.

LIST OF WITNESSES AND ASSOCIATIONS, ETC., REPRESENTED BY WITNESSES—*continued.*

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
B.							
BALLARAT Trustees, Executors, and Agency Co. Ltd.	..	2757	..	..	..	..	..
BARTON, Albert Edward	569	..	..	..	..	..	..
BATEMAN, Albert	..	..	..	399	..	..	..
BEALE, Octavius Charles	605	..	..	..	..	..	..
BENJAMIN, William	3, 391, 423, 842	2368	..	..	692A	..	..
BILLINGTON, Richard	..	..	806	..	..	..	..
BINNIE, Charles	83	..	..	..	..	..	..
BLACK, Edwin Alexander	..	..	..	..	254, 950, 1037	..	..
BLACKET, Reginald	637	..	..	..	..	..	..
BOOT and Shoe Retailers Association of Victoria ..	..	3318	..	..	..	..	..
BOOTH, Dr. James	..	2297	..	..	..	..	..
BOOT Manufacturers Association	..	1304	..	..	..	..	..
BOWMAN, William James	11, 121, 133, 152	..	..	..	..	..	..
BOYD, William Lowry	..	..	7, 36, 124	..	..	..	..
BRADDON, Sir Henry Yule, K.B.E., M.L.C. ..	883	..	..	..	..	..	..
BRAND, William Alfred, M.L.A.	..	..	747	..	..	..	..
BRENNAN, Hugh Dale	..	..	539, 942	..	..	..	..
BRIERLEY, Henry Charles	605	..	..	..	..	..	..
BRITISH Manufacturers, Australian Association of	659	..	..	..	..	..	..
BROMLEY, Frederick Charles	..	..	..	391	..	..	..
BROWNE, George Edward	210	..	..	..	..	..	..
BUTTER Factories Association, Co-operative ..	887, 898	..	..	..	..	..	..
C.							
CAMPBELL, Thomas Irving	3	..	..	..	..	..	..
CATERERS Association of Victoria, Federated ..	..	2311	..	..	..	..	..
CATTERMULL, Henry Albert, M.L.A.	..	..	739	..	..	..	..
CHAMBER of Commerce, Melbourne	..	1267	..	..	..	..	..
,, ,, Sydney	279, 668	..	..	..	..	..	..
,, ,, Hobart	..	..	..	..	..	..	1, 92
,, Manufacturers, Associated ..	605	..	..	..	..	..	..
,, ,, New South Wales	605	..	..	..	..	..	..
,, ,, South Australia ..	..	..	..	110	..	..	..
,, ,, Victoria	..	989	..	..	..	..	..
,, Mines, Kalgoorlie	..	..	..	..	..	3, 4, 60	..
CHAPMAN, James Robertson	..	..	..	..	..	..	92
CHAPMAN, John Hedley, M.L.A.	..	..	..	477	..	..	..
CHEEK, Hon. John Wm., M.L.C.	..	..	..	..	..	..	268
CLARENCE Municipal Council	..	..	..	..	..	..	283
CLARK, James	..	..	945	..	..	..	..
CLARKSON, Albert Ernest	..	..	..	110	..	..	..
CLOWE, Robert Thomas	..	3133	..	..	..	..	..
CLUB, Victorian Amateur Turf	..	2824, 2858	..	..	..	..	..
CLUB, Victoria Racing	..	2824, 2858	..	..	..	..	..
COASTAL Farmers Co-operative Society ..	637	..	..	..	..	..	..
COMMERCE, Chamber of	279, 668	1267	..	..	..	..	1, 92
COMMISSIONER of Taxation, Federal	827	149, 1647, 1694, 3963	..	..	..	..	..
,, ,, Deputy Federal ..	447, 524	..	847	..	473, 584, 646	..	431, 680
,, for Stamp Duties	..	..	923	..	..	..	..
,, for Taxation, State	..	..	539, 942	..	..	..	..
,, of Taxation, New South Wales ..	360	..	..	..	..	..	..
,, ,, for Western Australia	..	..	..	..	254, 950, 1037	..	..
,, ,, South Australia ..	..	..	196	..	..	..	..
,, of Taxes for Tasmania ..	..	..	..	..	..	..	115A, 748
,, ,, ,, Victoria ..	..	2877, 3946	..	..	..	..	..
,, Western Lands Board (Chief) ..	819	..	..	..	..	..	..
CO-OPERATIVE Butter Factories Association ..	..	887, 898	..	..	..	..	..
COPLAND, Professor Douglas Berry, M.A. ..	..	..	..	..	..	..	506
CORNWALL, Frank Herbert Goode	..	553	..	..	..	..	..
COTES, Percy Robert	..	3487	..	..	..	..	..
COWDERY, Charles Edward	644	..	..	..	..	..	..
CRAIGIE, Edward John	..	..	..	96	..	..	..
CUMMINS, Harry Haddon	..	..	..	..	..	..	1
D.							
DAIRYMENS Association, Victorian Milk Producers and Retail	..	1401	..	..	..	..	..
DAIRY Farmers Co-operative Milk Co.	738	..	..	..	..	..	..
DALY, Herbert James	..	..	..	..	..	60	..
DAVIES, Will	..	..	..	..	174	..	..
DENNIS, Arthur Seymour	..	3790	..	..	..	..	..
DIXON, Francis Edward	..	1204, 3174	..	..	..	..	..
DOBSON, Louis Lempriere	..	..	..	..	..	..	623
DOHERTY, William Henry	..	..	340	..	..	..	..
DOUGLAS, Percy Cunningham	..	..	..	..	..	..	431, 680
DOWNE, George Gordon	..	2095	..	..	..	..	..
DOWNIE, Henry Edmond	..	..	..	..	..	..	115A, 748
DRAPERS Association, Victorian Master ..	..	2331	..	..	..	..	..
DUNCAN, Hon. Walter Gordon, M.L.C. ..	..	..	..	457	..	..	..
DUNLOP, Maxwell Pollok	554	..	..	..	..	..	..

* Evidence not printed.

LIST OF WITNESSES AND ASSOCIATIONS, ETC., REPRESENTED BY WITNESSES—*continued.*

Witnesses.	Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
E.							
EASTWOOD, John Saville	132	3829	..	..	..	..	..
ECONOMIC Research Society, Melbourne	..	2050, 3572A	..	..	..	..	..
EEDY, Arthur Malcolm	679	..	..	..	..	..	..
EGAN, Peter Joseph	723	..	..	..	..	..	..
EMPLOYERS Federation, Victorian	..	1178	..	..	..	..	..
EWING, Robert	827	149, 1647, 1694, 3963	..	..	..	..	..
EXECUTOR (and Trustee) Companies	167, 239, 644	495, 955, 1510, 2272	3, 154	81	..	..	..
F.							
FARMERS and Settlers Association of New South Wales	3	..	..	..	..	..	..
„ and Stock-owners Association of Tasmania	..	..	..	..	..	..	303
„ Union, Victorian	..	594	..	..	..	..	..
FEDERAL Commissioner of Taxation	827	149, 1647, 1694, 3963	..	..	..	..	..
„ „ „ Deputy	447, 524	..	847	..	473, 584, 646	..	431, 680
„ Institute of Accountants, Incorporated	..	2098	..	..	..	..	..
„ Life Insurance Offices Association	679	..	..	..	..	..	..
FEDERATED Caterers Association of Victoria	..	2311	..	..	..	..	..
„ Graziers Association of Australia	391	2368, 3829	..	..	..	..	..
FEDERATION, Victorian Employers	..	1178	..	..	..	..	..
FITZPATRICK, Edward	..	..	923	..	..	..	..
FLEMING, Thomas Hastie	547	..	..	..	..	..	..
FOWLER, James Richard	..	..	..	401	..	..	..
FREE Trade and Land Valuation League of New South Wales	689	..	..	..	..	..	..
FRUITERERS Association, Melbourne and Suburban Retail	..	549	..	..	..	..	..
FRUIT-GROWERS Association, Central	..	540	..	..	..		..
„ „ Metropolitan	..	540	..	..	..	..	..
„ Tweed River	..	..	486	..	..	..	..
G.							
GARCIA, George Maurice	..	3639	..	..	..	..	..
GIBLIN, Lyndhurst Falkiner	..	..	..	..	..	..	323
GIPPSLAND and Northern Co-operative Selling and Insurance Co. Ltd.	..	914	..	..	..	..	..
GIRDLESTONE, Frank Kelling	..	..	..	..	883	..	..
GLYNN, Hon. Patrick McMahon, K.C.	..	..	..	420	..	..	..
GRAVES, Edward Haniford	513	..	..	..	..	..	..
GRAZIERS Association	330	..	..	..	..	..	..
„ „ Central and Northern	..	..	7, 36	..	..	..	..
„ „ of Australia, Federated	391, 423, 842	2368, 3829	..	..	..	..	..
GRIERSON, Robert John	700	..	..	..	..	..	..
GROCERS Association of Victoria	..	582	..	..	..	..	..
H.							
HALLAHAN, James Patrick	..	..	..	..	..	80	..
HAMILTON, Albert Edwin	..	..	..	125	..	..	..
„ R.	..	..	..	..	..	3	..
HARDWARE Association, Victorian	..	1974, 3527	..	..	..	..	..
HARKNESS, Thomas Young	..	1304	..	..	..	..	..
HARNETT, Albert Alfred	..	..	..	..	..	..	423
HARRIS, Charles Marshall	..	..	..	..	242	..	..
HARTE, Albert Edward	..	..	356	..	..	..	..
HAWLEY, John	161	..	..	..	..	..	..
HEATH, Albert Edward	791A	..	..	..	..	..	..
HEATON, Herbert	..	..	..	442	..	..	..
HENLEY, Sir Thomas, K.B.E., M.L.A.	721, 739	..	..	..	..	..	..
HERRING, Maurice Stanley	..	..	3, 154	..	..	..	..
HIGGS, Frederick Marshall	..	2050, 3572A	..	..	..	..	..
HORNE, Louis Edgar	..	..	..	..	4	..	..
HUGHES, John Foster	423	..	..	..	..	..	..
HUIE, Alexander Gordon	689	..	..	..	..	..	..
HULME, Thomas Shalleross	447, 524	..	..	..	..	..	..

* Evidence not printed.

List of Witnesses and Associations, etc., Represented by Witnesses—*continued.*

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
I.							
INCORPORATED Institute of Accountants, Commonwealth of Australia	..	1552, 3938	..	..	..	..	1
INDUSTRIES Protection League, Australian	..	775	..	..	..	..	..
INSTITUTE, Law, of the State of Victoria	..	1113, 2844, 2859	..	..	..	..	..
„ of Accountants, Commonwealth of Australia Incorporated	..	1552	..	..	..	..	1
„ „ Federal Incorporated	..	2098	..	..	..	..	..
„ „ in South Australia	..	..	..	369	..	..	..
„ „ Western Australia	..	..	..	..	433	..	..
INSURANCE Offices Association, Federal	679	..	..	..	..	..	..
IRVINE, Professor Robert Francis, M.A.	2, 490	..	..	..	..	..	..
ISLES, James Thomas	..	..	964	..	..	..	..
J.							
JENKINS, Philip Llewellyn	659	..	..	..	..	..	..
JOHNSON, Walter Charles	..	..	..	..	747	..	..
JONES, George	..	2331	..	..	..	..	..
„ John Robert	167	..	..	..	..	..	..
JOWETT, Edmund, M.H.R.	..	594, 953	..	..	..	..	..
JUKES, James Vaughan	..	.. *	..	..	..	4	..
K.							
KEAN, John	..	3404	..	..	..	..	..
KEELY, Michael Timothy	..	..	847	..	..	..	..
KEEP, Walter J.	148	..	..	..	..	..	..
KELLY, Edwin Clarence Whiteman, B.A., LL.B.	..	2	..	..	..	..	..
KENNA, Joseph	..	..	7A, 111	..	..	..	..
KIDDLE, John Beacham	..	2844, 2859, 3242	..	..	..	..	..
KIDMAN, Sir Sidney, K.B.	..	..	..	474	..	..	..
KINGSMILL, Hon. Walter, M.L.C.	..	..	..	..	630	..	..
KNOX, Edward William	440	..	..	..	..	..	..
L.							
LABOUR Council, Trades and	..	3404	..	..	..	..	..
„ Party, Australian	..	3404	..	..	..	..	..
„ „ Parliamentary	..	..	..	..	..	..	..
LANDS Department, Assistant Under-Secretary	..	..	907	..	..	..	601
LANG, Frederick Andrew	..	495, 955, 1510, 2272	..	..	..	..	..
LAVATER, Louis	..	3138	..	..	..	..	..
LAW Institute of the State of Victoria	..	1113, 2844, 2859	..	..	..	..	..
„ Society, Tasmanian	..	..	..	..	..	..	645,711
LEAGUE, Australian Industries Protection	..	775	..	..	..	..	..
„ Free Trade and Land Values, of New South Wales	689	..	..	..	..	..	..
„ Single Tax of South Australia	..	..	..	96	..	..	..
„ „ „ Victoria	..	1427	..	..	..	..	..
LIFE Insurances Offices Association, Federal	679	..	..	..	..	..	..
LIGHTBAND, Russell Martin	..	..	5, 752	..	..	..	..
LONGFORD, Municipal Council	..	..	..	..	..	..	..
LOUDEN, Robert Edward	700	..	..	..	..	..	268
LOWRY, Albert	..	2341	..	..	..	..	..
M.							
MACKENZIE, Robert William Berry	..	1267	..	..	..	..	..
MACLEAY, Kenneth Leslie Oram	..	2712A, 3150	..	..	..	..	..
MAKOWER, Ernest Samuel	..	460	..	..	..	..	..
MANUFACTURERS, Associated Chambers of	605	..	..	..	..	..	..
„ New South Wales Chamber of	605	..	..	..	..	..	..
„ South Australian Chamber of	..	..	..	110	..	..	..
„ Victorian Chamber of	..	989	..	..	..	..	..
MARKHAM, Patrick Joseph	..	1427	..	..	..	..	..
MARKS, Elijah Caleb Job	..	..	535	..	..	..	..
MASON, Reginald John	..	3265, 3327	..	..	..	..	..
MASTER Drapers Association, Victorian	..	2331	..	..	..	..	..
MATTIE, Walter	..	..	..	..	..	..	..
MELBOURNE Economic Research Society	..	2050, 3572A	..	..	..	78	..
„ Philharmonic Society	..	2312A, 2324	..	..	..	..	..
„ Symphony Orchestra	..	2324	..	..	..	..	..
„ Warehousemens Association	..	1974, 3527	..	..	..	..	..
MELVILLE, Arthur George	..	..	907	..	..	..	..
MERCHANTS Association, Victorian	..	1974, 3527	..	..	..	..	..
METALS Association, Australian Mines and	..	989, 1202	..	..	..	..	..

* Evidence not printed.

List of Witnesses and Associations, etc., Represented by Witnesses—*continued.*

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
MIDLAND Railway Company of Western Australia	..	..	..	..	692A, 729, 747	..	..
MILLER, Sir Denison, K.C.M.G.	862	..	..	..	..	..	..
„ Robert Duncan	779	..	..	..	..	..	..
MILL-OWNERS Association, Victorian	..	2095	..	..	..	..	..
MILLS, Hon. William George James, M.L.C.	..	..	..	291	..	..	..
MINERS Federation	711	..	..	..	..	..	..
MINES and Metals Association, Australian	..	989, 1202	..	..	..	..	..
MINES, Chamber of, Kalgoorlie	..	..	..	..	174	..	..
MINING Association of Western Australia	..	..	..	..	..	3, 4, 60	..
MIRAMS, Hugh Norman Heywood	..	1202	..	..	..	..	..
MORGAN, David	..	887	..	..	..	..	..
MORLEY, George James	..	..	..	491	..	..	..
MORTLOCK, Harold John	..	..	..	..	458	..	..
MUIRHEAD, James Atkin	..	813	..	..	..	..	..
MUNICIPAL Association of Victoria	..	2780	..	..	..	..	..
„ Council, Clarence	..	..	..	..	..	..	283
„ „ Longford	..	..	..	..	..	..	268
MURCOTT, Edwin	..	..	..	..	729	..	..
MURDOCH, Hon. Jas., M.L.C.	..	..	..	..	..	..	283
MURPHY, Read	..	1525	..	..	..	..	..
MUSICAL Society of Victoria	..	3138, 3146	..	..	..	..	..
Mc							
McILWRICK, William Matthew	..	3112	..	..	..	..	..
McINNES, John Stewart	..	..	355, 357	..	..	..	..
McMASTER, Colin James	819	..	..	..	..	..	..
McNEIL, James Alexander	..	2728	..	..	..	..	..
N.							
NANKIVELL, Thomas	..	..	..	..	759, 806	..	..
NATIONAL Union	..	989, 1903	355	300	..	..	..
NICHOLLS, Hon. Hubert Alan, M.L.C.	..	..	..	..	..	..	303
NIXON, Edwin Vandervord	..	989, 1903	..	..	..	..	..
O.							
O'DONNELL, Charles	..	..	..	..	..	75, 85	..
OEHR, Rudolph John	..	2312A	..	..	..	..	..
OGDEN, James Ernest	..	..	..	..	..	..	601
O'KEEFE, Daniel Bede	738	..	..	..	..	..	..
ORCHESTRA, Melbourne Symphony	..	2324	..	..	..	..	..
OUTHWAITE, Alick Hugh	..	1974, 3527	..	..	..	..	..
OVERHEU, Frederick Charles	..	..	..	..	433	..	..
OWEN, Edgar Theodore	..	..	..	..	1015	..	..
P.							
PARLIAMENTARY Labour Party	..	..	..	..	..	..	601
PASTORALISTS Association of Western Australia	..	..	..	..	759, 806	..	..
„ Western Australia	..	..	..	..	433	..	..
PENNY, John Curwen	..	..	808	..	..	..	..
PERMANENT Trustee Co. Ltd.	239	..	..	..	..	..	..
PERPETUAL Trustee Co. Ltd.	167, 644	..	..	..	..	..	..
PHILHARMONIC Society, Melbourne	..	2312, 2324	..	..	..	..	..
PIKE, George Herbert	804	..	..	..	..	..	..
POLLARD, Percy George	..	..	..	..	..	..	411
POWELL, Sydney	..	..	..	300	..	..	..
PRATT, Ambrose	..	775	..	..	..	..	..
PRIMARY Producers	330, 554	..	..	..	883	..	423
PRINGLE, Percival John	..	1385, 1680	..	..	..	..	..
PRITCHARD, George Henry	..	..	460	..	..	..	..
PROTECTION League, Australian Industries	..	775	..	..	..	..	..
Q.							
QUEENSLAND Trustees Ltd.	..	..	3, 154	..	..	..	—
R.							
RACING Club, Victoria	..	2824, 2858	..	..	..	..	..
REALTY Development Co.	..	..	808	..	..	..	..
REDPATH, Hedley Norman	..	2098	..	..	..	..	..
RESEARCH Society, Melbourne, Economic	..	2050, 3572A	..	..	..	..	..
RICHARDSON, The Hon. Horace Frank, M.L.C.	..	2780	..	..	..	..	..
RINGWOOD, Arthur Ernest	..	3318	..	..	..	..	..
ROBINSON, Henry	..	898	..	..	..	..	..
ROGERS, William Foster	..	2806	..	..	..	..	..
ROSE, Frank William	..	..	..	1	..	..	..
ROSS, Professor Alexander David	..	..	..	..	904	..	..
ROWE, Henry Ellis	..	1178	..	..	..	..	..
RUBICON Lumber and Tramway Co. Ltd.	..	3112	..	..	..	..	..

* Evidence not printed.

LIST OF WITNESSES AND ASSOCIATIONS, ETC., REPRESENTED BY WITNESSES—*continued.*

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
SHANN, Professor Edward Owen Giblin ..	..	..	..	..	926	..	..
SHOOBRIDGE, William Ebenezer	..	..	..	..	..	..	289, 394
SIEVERS, Edward Johnson	320, 392	..	..	..	..	..	..
SIMMONS Matthew Wilkes	..	..	..	..	..	..	645, 711
SINGLE Tax League of South Australia ..	..	..	..	96	..	..	..
,, ,, ,, Victoria	..	1427	..	..	..	..	..
SKY, Frederick Morse	330	..	..	..	..	..	..
SLEEMAN, Herbert Richard	..	..	..	..	217	..	..
SMITH, Lort	..	2824, 2858	..	..	..	..	..
SMITH, Richard William	..	..	..	196	..	..	..
SOCIETY, Coastal Farmers Co-operative ..	637	..	..	..	..	..	..
,, Melbourne Economic Research ..	..	2050, 3572A	..	..	..	..	..
,, ,, Philharmonic	..	2312A, 2324	..	..	..	..	..
,, Musical, of Victoria	..	3138, 3146	..	..	..	..	..
,, Rochdale Co-operative Wholesale ..	700	..	..	..	..	..	..
,, Tasmanian Law	..	..	..	..	..	..	645, 711
,, West Wallsend Co-operative	700	..	..	..	..	..	..
SPRY, Frederick William	..	1552, 3938	..	..	..	..	..
STATE Commissioner of Taxation, New South Wales	360	..	..	..	..	..	..
,, ,, ,, Queensland ..	..	..	539, 942	..	..	..	..
,, ,, ,, South Australia ..	..	..	..	196	..	..	..
,, ,, ,, Western Australia	..	..	..	..	254, 950 1037	..	..
,, ,, ,, Tasmania ..	..	..	..	..	..	..	115A, 748
,, ,, ,, Victoria ..	..	2877, 3946	..	..	..	..	..
STATISTICIAN, Tasmanian Government ..	..	..	..	..	..	..	323
STEPHEN, Arthur Winburn	203, 290	..	..	..	..	..	..
STOCK-OWNERS Association of New South Wales	83	..	..	..	..	..	..
,, ,, South Australian ..	..	..	..	457	..	..	..
,, ,, Tasmanian Farmers and	..	..	..	..	..	..	303
STOREKEEPERS and Traders Association, Victoria	..	2331	..	..	..	..	..
STUART, Frederick William	..	..	486	..	..	..	..
SYDNEY and Suburban Timber Merchants Association	791A	..	..	..	..	..	..
TAXATION Standing Committee	..	989, 1903	355	300	..	..	..
TAXPAYERS Association of Queensland ..	..	..	5, 752	..	..	..	..
,, ,, Victoria	..	478, 1204	..	..	..	..	..
,, ,, Western Australia ..	..	..	..	..	4	..	..
and Property-owners Association ..	..	1204	..	..	..	..	..
THOMPSON, Gilbert Edgar	..	..	..	413	..	..	..
,, Stephen Percy, M.A., LL.M ..	..	1343, 3610	..	..	..	..	..
THOMSON, John, M.L.A.	..	..	..	..	564, 803	..	..
,, William Thomas	..	2311	..	..	..	..	..
TIMBER Merchants Association, Sydney and Suburban	791A	..	..	..	..	..	..
TRADES and Labour Council	..	3404	..	..	..	..	..
,, Hall, Ballarat	..	3404	..	..	..	..	..
,, ,, Melbourne	..	3404	..	..	..	..	..
TROY, Michael Francis	..	..	..	..	876	..	..
TRUSTEE and Agency Co. of South Australia, Executor	..	..	..	81	..	..	..
TRUSTEES, Executors, and Agency Co. Ltd., Ballarat	..	2757	..	..	..	..	..
TRUSTEE and Executor Companies	167, 239, 644	495, 955, 1510, 2272	3, 154	81	..	..	..
TRUSTEES Limited, Queensland	..	..	3, 154	..	..	..	..
TRUSTEE Company Ltd., Permanent ..	239	..	..	..	..	..	..
,, ,, Perpetual	167, 644	..	..	..	..	..	..
TURF Club, Victorian Amateur	..	2824, 2858	..	..	..	..	..
TWEED River Fruit-growers	..	..	486	..	..	..	..
UNION, National	..	989	355	300	..	..	..
,, Primary Producers	554	..	..	..	..	..	..
,, Victorian Farmers	..	594	..	..	..	..	..
UNITED Cane-growers Association	..	..	340	..	..	..	..

* Evidence not printed.

LIST OF WITNESSES AND ASSOCIATIONS, ETC., REPRESENTED BY WITNESSES—*continued.*

Witnesses.	*Minutes of Evidence—Pages.						
	Sydney.	Melbourne.	Brisbane.	Adelaide.	Perth.	Kalgoorlie.	Hobart.
V.							
VALUER-GENERAL	320, 392	..	..	..	..	..	..
VALUER, Government	513	..	..	..	..	..	..
VICKERY, Arthur	763	..	..	..	..	..	..
VICTORIA Amateur Turf Club	..	2824, 2858	..	..	..	..	..
,, Racing Club	..	2824, 2858	..	..	..	..	..
VICTORIAN Butter Factories Co-operative Company Ltd.	..	914	..	..	..	..	..
,, Chamber of Manufactures ..	..	989	..	..	..	..	..
,, Employers Federation	..	1178	..	..	..	..	..
,, Farmers Union	..	594	..	..	..	..	..
,, Hardware Association	..	1974, 3527	..	..	..	..	..
,, Master Drapers Association ..	..	2331	..	..	..	..	..
,, Merchants Association	..	1974, 3527	..	..	..	..	..
,, Milk Producers and Retail Dairymens Association	..	1401	..	..	..	..	..
,, Mill-owners Association	..	2095	..	..	..	..	..
,, Producers Co-operative Company Ltd.	..	2712A, 3150	..	..	..	..	..
,, Storekeepers and Traders Association	..	2331	..	..	..	..	..
W.							
WADDELL, Hon. Thomas, M.L.C.	495	..	..	..	..	..	..
WALTON, Edmund	..	3125	..	..	..	..	..
WAREHOUSEMEN'S Association, Melbourne ..	..	1974, 3527	..	..	..	..	..
WAUGH, Ernest William	..	..	..	..	759, 806	..	..
WELDON, Robert McIntyre	..	2877, 3946	..	..	..	..	..
WESTERN District Factories Co-operative Produce Company Ltd.	..	914	..	..	..	..	..
WEST Wallsend Co-operative Society	700	..	..	..	..	..	..
WHIDDON, William Henry	360	..	..	..	..	..	..
WHITE, Stanley McKellar	..	..	814	..	..	..	..
WHITELY, John Francis	..	..	..	..	473, 584, 646	..	..
WHITING, Robert William	426	..	..	..	..	..	..
WIGNALL, William Miller	..	1401	..	..	..	..	..
WILLIAMS, Albert Edward	..	549	..	..	..	..	..
,, John Nicholas	..	582	..	..	..	..	..
WILLIAMSON, Ernest Woolmer	..	..	..	..	81	..	..
WILLIS, Albert Charles	711	..	..	..	..	..	..
WILSON, Alexander William	..	914	..	..	..	..	..
WILSON, James	..	2190, 2303	..	..	..	..	..
WINTON, Herbert Anthony	..	478	..	..	..	..	..
WRIGHT, Harry	..	..	928	..	..	..	..
WYLES, Thomas Andrew	..	..	..	121	..	..	..
Y.							
YARWOOD, Frank Nelson	239, 668	..	..	..	..	..	..
Z.							
ZELMAN, Alberto	—	2324, 3146	..	..	..	..	..

* Evidence not printed.

APPENDIX No. 2.

Questionnaire to Taxation Commissioners.

The Commission will be glad to have answers to the following questions :—

1. *Delimitation of Spheres of Taxation between the Commonwealth and States :—*
   Is such a delimitation (*a*) practicable; and (*b*) desirable as a means of preventing duplication and expense? If so, what forms of taxation should, in your opinion, be exclusively reserved to the respective authorities?
2. *Harmonization of Commonwealth and State Taxation :—*
   Apart from apportionment of taxes, what action do you consider most appropriate to bring about harmonization?
3. As part of the preceding question :—
   (1) Would uniform legislation be required before the adoption of uniform returns?
   (2) Under existing conditions, how could forms of return be simplified?
   (3) Do you favour the use by Commonwealth and State of separate forms, suitable for—
      (*a*) Salary and wage earners;
      (*b*) Farmers;
      (*c*) Ordinary traders.
   (4) Do you favour deduction by employers of tax from weekly wages and payment of the tax by means of stamps?
4. *Differentiation in Rates between Income derived from Personal Exertion and Income from Property :—*
   (1) Is differentiation justifiable?
   (2) Do you regard the present degree of differentiation in the Federal Income Tax reasonable?
   (3) Do you favour the British system under which beyond a certain point of income a super tax *not differing according to the source of income is levied?*
   (4) In this connexion, will you compare the methods adopted under the Acts of New Zealand, the several Australian States, and those of any other country with which you may be familiar?
   (5) Would you recommend some other method, *e.g.*, the Italian method of Classification into—
      (*a*) Personal exertion;
      (*b*) Business profit;
      (*c*) Property.
5. *Graduation of Tax :—*
   (1) Should the tax be proportional or graduated?
   (2) Assuming the retention of the principle of graduation, should the Commonwealth system of calculating the tax be retained, or a simpler form substituted?
   (3) What is the nature of the scale under the Income Tax Law of your State?
   (4) Have you any suggestions to make as to the range of the graduation, both as to its beginning, steepness, and highest limit in respect of rate, and in respect of income to which such limit should apply?
   (5) Should the rates and incidence of Income Tax be modified, or regulated by reason of the incidence of other taxes, *e.g.*, Customs duties, Excise Duties, Land Tax, Estate Duties, &c.?
   (6) If your answer be "yes," on what principles and by what rules should such modification or regulation be determined?
6. *Double Income Tax :—*
   (1) Would you recommend adoption of the scheme recommended by the British Royal Commission, which involves relief by the United Kingdom up to a certain point, and the granting of any further relief by the Dominion or State authorities?
   (2) In this connexion should income derived from sources outside Australia be taxed in the hands of an Australian resident?
   (3) Having regard to the extension of commercial enterprise and the fact that persons, natural and juristic, have interests in and derive income from many parts of the Realm, what method should be adopted to distribute the tax equitably as between constituent States and Dominions?
   (1) What steps, if any, should be taken to prevent double taxation as between the Australian States in respect of the same income?
7. *Profits resulting from the Export of Goods :—*
   (1) Should income be assessed on the basis of f.o.b. prices in Australia, or
   (2) On parity values in Australia at the date when goods are shipped, or
   (3) On the price realized when the goods are sold abroad, or
   (4) In some other way?
   (5) How should losses resulting from sale abroad of exported goods be treated?
8. *Taxation at the Source :—*
   (1) Is taxation at the source practised under the Acts of your State?
   (2) If so, what led to the adoption of that method?
   (3) What is the Company rate, and what is the highest individual rate?
   (4) Where the Company is taxed upon dividends, is the amount of dividend taken into account for the purpose of determining the rate payable by a shareholder?
   (5) Does the State system of taxation at the source relate to dividends only, or, *e.g.*, to interest, rents, salaries, &c.?
   (6) Where the Company rate differs from the rate at which an individual shareholder is liable, is there a provision for adjustment?
   (7) Do you favour—
      (*a*) Taxation of the Company without adjustment to individual shareholders, or,
      (*b*) A system of adjustment?

9. *Live Stock—Natural Increases or Purchased Stock :—*
   (1) What methods do you follow in dealing with this subject for the purposes of Income Tax?
   (2) Would you, from your experience, recommend any other method?
10. *Shipping Businesses trading beyond Australia :—*
    On what basis are incomes of these businesses taxed?
11. *Income of Beneficiaries under a Will or Settlement :—*
    (1) Is such income classified as income from personal exertion?
    (2) Is such income taxable against the beneficiary as income from personal exertion or income from property, in accordance with its origin, or is it taxed otherwise?
    (3) Under what circumstances, if any, is a Trustee liable to tax?
12. *Leases, or transfer of Leases :—*
    (1) Are premiums for leases or transfer of leases taxable under the State Act?
    (2) If so, are they charged at property rate?
    (3) What deductions, if any, are made to :—
       (*a*) The payer;
       (*b*) The transferee;
    (4) Is there any reason why the gain on an occasional realization of a lease should be taxable, when similar gain on the realization of freehold land is not taxable under the Federal Income Tax Act?
13. *Residence owned by Taxpayer :—*
    (1) Is a percentage of the capital value assessed to Income Tax?
    (2) If so, what deductions, if any, are allowed?
    (3) What percentage of the capital value is the basis of taxation?
    (4) What is your practice in reference to a taxpayer who owns and maintains for his own occupation more than one residence?
14. *Wasting Assets, Coal Mines, Franchises, Delegated Rights, &c. :—*
    What, if any, are the special deductions allowed in these cases?
15. *Tax-free Securities :—*
    To what extent in your case is the revenue affected by the Tax-free securities issued—
       (*a*) By Commonwealth or State Governments;
       (*b*) By Companies?
    In the latter case should Companies be prohibited from issuing securities free of tax? (This is done in the State of New York.)
16. *Undistributed Profits :—*
    (1) In your opinion is it desirable in the interests of production that undistributed profits, if retained and used in the business, should be—
       (*a*) Wholly exempt from taxation; or,
       (*b*) Partially exempt?
    (2) If you favour partial exemption, what percentage of the rate charged upon dividends should be imposed?
    (3) Can you suggest a method for extending the principle of total or partial exemption of undistributed profits to—
       (*a*) Partnerships;
       (*b*) Individual business; and,
       (*c*) Invested savings of other taxpayers?
17. *Averaging of Income over a term of years for purposes of Income Tax :—*
    (1) Do you favour adoption of a system of averaging over a term of say, 5 years, or any other period?
    (2) If so, do you think the system should be confined to primary producers, or be open to any taxpayer who elects to take advantage of it?
    (3) If the system be adopted, should it be obligatory upon any section or sections of taxpayers?
    (4) If averaging be adopted, should the average be taken over a period of past years, or begin from a date to be fixed—say the beginning of the next tax year?
    (5) Can you form an estimate of the revenue effect in your State of the adoption of the averaging system. Illustrate by examples taken at random from the actual returns of primary producers.
    (6) Assuming that a reduction in revenue would result, should the loss be borne by Income Tax revenue, or be charged to general revenue?
    (7) How should the averaging system be applied :—
       (*a*) To adjust transactions with an outgoing taxpayer where a business changes hands;
       (*b*) In dealing with the incoming taxpayer;
       (*c*) In dealing with a new business, the owner of which has no "past years"?
    (8) In your answers to question 17 have you had in view :—
       (*a*) The averaging of the total income of the taxpayer, or,
       (*b*) The averaging of the income from any one business, of which he may be the owner, as *e.g.*, in the case of a pastoralist who is also a merchant?
18. *Setting of Losses against Profits :—*
    (1) As an alternative to the averaging system, would it be preferable, from the point of view either of administration or of equity, to allow a set off of losses against profits of succeeding years?
    (2) Please discuss this method on the lines, so far as they are applicable, of the questions asked with respect to averaging.

19. *Casual Profits :—*

(1) Are casual profits liable to Income Tax in your State ?
(2) How are casual profits defined ?

20. *Bonus Shares :*

For taxation purposes, how do you treat bonus shares :
(*a*) Distributed on the basis of so-called profits arising out of the re-valuation of fixed assets ;
(*b*) Based on profits arising from the sale of fixed assets ;
(*c*) Based on the capitalization of undistributed profits ?

21. *Exemptions and Deductions :—*

(1) In your opinion could the Commonwealth and States suitably agree upon :—
(*a*) Amount of the general exemption ;
(*b*) Deductions for dependent children ;
(*c*) Other exemptions and deductions ?
(2) Should the deductions mentioned in (1) apply to all taxable incomes irrespective of amount ?
(3) On what principle should the general exemption be determined ?
(4) Do you consider the deduction on account of charitable contributions should be :—(*a*) Abolished, or (*b*) Increased or reduced, or (*c*) Treated in the method indicated in sub-clause (2).
(5) In the case of concessional deductions, *i.e.*, deductions not in the nature of losses or outgoings incurred in gaining according to the rate applicable to the taxpayer's net income, with a view to greater equity, would you recommend in lieu of a deduction from the taxpayer's net income a deduction of an amount calculated at the starting rate of the tax ?
(6) Do you consider the present Commonwealth and State rates of exemption applicable to married and single persons respectively, equitable ?
(7) For the last tax year what were the totals of :—
(*a*) Concessional deductions allowed ;
(*b*) All deductions allowed ?
(8) (*a*) What percentages of the total concessional deductions allowed were attributable to allowances on account of :—
(i) Children ;
(ii) Life insurance premiums ;
(iii) Rates and taxes.
(*b*) Do you regard rates and taxes as a concessional deduction ?
(9) What deductions are allowed in your State to Companies on account of :—
(*a*) Rates and taxes ;
(*b*) All other deductions ?

22. *Depreciation :—*

(1) What is your practice as to depreciation ?
(2) Do you publish rates of allowance ?
(3) In your opinion should allowance be made for depreciation or wastage for wear and tear of :—
(*a*) Buildings ;
(*b*) Fencing ;
(*c*) Tanks and dams ;
(*d*) Suckering and scrubbing ;
(*e*) Expiry of leases ?

23. *Co-operative Societies :—*

Are such Societies treated for purposes of Income Tax in the same way as Limited Liability Companies ?

24. *Corporation Tax :—*

If necessary for revenue purposes, would you favour as a substitute for an Excess Profits Tax :—
(1) A proposal to impose a corporation tax on the British lines of say, 1s. in the £ on the profits and income of concerns with limited liability and engaged in trading or similar transactions ? (See Speech by the British Chancellor on making the Financial Statement, 19th April, 1920.)
(2) Any other method ?

25. *Decentralization :—*

(1) Are officers deputed to visit country centres for the purpose of :—
(*a*) Assisting taxpayers ;
(*b*) Making investigations ?
(2) If so, should this system be continued and extended ?

26. *Dates and Method of Payment of Taxes :—*

(1) As a means of relieving taxpayers, could practical working arrangements be made between the Commonwealth and the States as to the dates of payment of tax ?
(2) Should payment by instalments be allowed, and if so, on what basis ?
(3) Has the Commissioner power, under your Act, acting on his own discretion, to extend time for payment ?
(4) Should one date be selected on which Federal Income Tax in practically all cases would be payable ?

27. *Delay in Payment of Assessed Tax :—*

Where some fine or penalty is imposed for failure to pay the tax within the prescribed period, should such penalty be :—
(*a*) A fixed amount, or
(*b*) A percentage of the tax, or
(*c*) Interest at a fixed annual rate ?

28. *Objections to Assessment :—*

(1) In your State have taxpayers free access to the Commissioner for purposes of discussing objections before taking any formal action by way of appeal.
(2) Is it the practice for the case of both the Department and the taxpayer to be fully and frankly disclosed ?

29. *Appeals, &c. :—*

(1) In your State to what tribunals may taxpayers appeal from the Commissioner's decision ?
(2) Is there any complaint :—
(*a*) That appeals are too costly, or
(*b*) That there is too much delay in obtaining final decisions ?
(3) Is there any demand for the constitution of a Board to which taxpayers might appeal in lieu of going to a Court ?
(4) If some such Board is favored, how should it be constituted ?
(5) To what extent should the decisions of the Board be final ?

30. *Relief Provisions :—*

What provisions, if any, are there in the Acts of your State for affording relief from tax, total or partial, in cases where hardship would result from enforcement of collection ?

31. *Evasion of Tax :—*

Have you reason for thinking that evasion is largely practised by—
(*a*) Neglecting to furnish Returns ;
(*b*) Withholding of information or falsification of figures submitted ;
(*c*) Any other methods ?

32. *Aggregation of Income. Husband and Wife :—*

Should the income of husband and wife be aggregated for Income Tax purposes, as is done in the United Kingdom ?

33. What is the cost of collection of Income Tax in your State :—

(*a*) Per assessment ;
(*b*) Per £100 collected ?

34. Can you furnish statistics extending over a period of say, ten years, showing particulars of tax as set out in Federal Statement, copy attached.

35. (*a*) Are Ordinances or General Orders, or Office Orders (by whatever name known) issued for guidance of the Staff, in which there are circulated the opinions of Crown Law officers *re* interpretation of the Act, and Judgments of the Court of other rules ?
(*b*) Are these made available to the public ? If so, on what conditions ? If not, is there any reason why they should not be made available ?

36. (*a*) Is an annuity which has been purchased with cash by or for the annuitant taxable as income to the full value in the year in which such annuity is received ?
(*b*) If taxable, is it taxable as income from personal exertion or income from property ?

37. *Composite Income :—*

(1) Should Composite Income be dealt with as in the Third Schedule of the Federal Income Tax Assessment Act ?
(2) If not, have you any suggestions to make as to the treatment of Composite Incomes ?

38. *Reduction of Revenue by proposed Amendments :—*

Where, on the ground of equity, amendments are suggested which would have the effect of reducing revenue, how should such reduction be made good ?

39. *Differences between Commonwealth and State Law and Practice :—*

Please comment on any outstanding differences between the Income Tax law and practice of your State and that of the Commonwealth.

Land Tax :—

1. For purposes of Land Tax, has valuation been made of all the land in the State ?
2. To what extent are the State valuations adopted by local authorities ?
3. What fee is charged to local authorities ?
4. Are the State valuations accessible to the public ?
5. What fee is charged to the public for certified copy of valuation of any land ?
6. Is the valuation register largely resorted to by the public ?
7. Has the existence of the Valuation Register had any discernible effect in steadying the price-movements of land ?
8. Are you in favour of a system of valuation for all purposes, Federal and State. If so, under what control should this be ? *e.g.*, should it be under—
(*a*) State control, as in the New South Wales Valuer-General's system ; or
(*b*) Entirely under Federal control ; or
(*c*) Under Federal control to the extent only of a general supervision for the purpose of securing as far as possible unity of method and elimination of the personal equation.
9. What period is allowed under your Act within which an amended assessment may be issued ?

10. *Valuation of Improvements* :—
(1) Do the definitions in your Act correspond with those in the Federal Act ?
(2) If a difference exists, does that difference prejudice the adoption of Federal valuations for State purposes.
(3) Would it be—(*a*) just ; and (*b*) desirable to exclude non-visible improvements ?

11. *Unimproved Value* :—
In Campbell's case, Mr. Justice Rich suggested that the definition be put on a practical basis instead of a hypothetical basis. How could this best be effected ?

12. What directions are given to valuers for taxation purposes ? Please produce copy of instructions, if any.

13. Will you compare the provisions of the State Land Tax Act relating to joint-owners with the provisions of the Commonwealth Act.

14. (1) Should a tribunal in the nature of a Board of Appeal be constituted with power to determine mattersindispute between the Department and the taxpayer ;
(2) How should such a tribunal be constituted ?

15. What provision, if any, is made for relief of a taxpayer in a case where payment of tax involves hardship ?

16. What is the position of Lessees (other than Crown Lessees) under the State Act ?

17. *Crown Leaseholds* :—
Should such leaseholds be subject to Land Tax ? If so, what should be the basis of valuation ?

18. *Exemption* :—
Is there in your opinion any justification for reducing the exemption of £5,000 in the Federal Act ? What exemption is allowed by the State Act ?

Turn-over Tax and Levy on Wealth :—
Among other forms of taxation suggested to the Commission are :—
(*a*) A Turn-over Tax, *i.e.*, a tax at a percentage rate upon the price of all articles sold, tax to be paid at the time of purchase of goods ;
(*b*) A levy on wealth ;
Please express your opinion on the desirability or otherwise of these suggestions from the points of view—
(*c*) Economy principle ;
(*d*) Administration.

Probate Duties and other forms of Direct Taxation :—
Where such taxation exists in your State, please give a short summary of the provisions of each of the Acts and comment upon material points of difference, if any, between these Acts and corresponding Commonwealth Acts.

APPENDIX No. 3.

CONCESSIONAL ALLOWANCES UNDER THE INCOME TAX ACTS OF THE COMMONWEALTH AND STATES.

CHILDREN.

Commonwealth.	New South Wales.	Victoria.	Queensland.	South Australia.	Western Australia.	Tasmania.
Income Tax Assessment Act 1915–1918. Section 18 (1) (*k*). (*k*) The sum of Twenty-six pounds in respect of each child, who is under the age of sixteen years at the beginning of the financial year in which the income was received, wholly maintained by any taxpayer who is not an absentee.	*Act No.* 11/1912. Section 16 (1) (*b*). (*b*) The sum of Fifty pounds in respect of each child who is wholly maintained by him and who is under the age of eighteen at the end of the year of income.	Nil	*Income Tax Acts* (*Consolidated*) 1902–1920. Section 13 (v). (v) The amount of Twenty-six pounds in respect of each and every child of a taxpayer ordinarily resident in Queensland whose net income does not exceed Eight hundred pounds, under the age of sixteen years on the first day of the year in respect of which the assessment is made, and who is actually dependent on the taxpayer ; and see proviso to this sub-section.	*Act No.* 1337/1918 (*Section* 7). Section 22 (xia). (xia). If the net amount of the income (before making the deduction provided for by subdivision xi. of this section) does not exceed Five hundred and fifty pounds and the account is the account of the taxpayer in his sole individual right and the taxpayer is resident in South Australia, there shall also be deducted from the net amount of the income the sum of Fifteen pounds in respect of every child of such taxpayer wholly maintained by such taxpayer who was living and under the age of fifteen years at the commencement of the period for which the income is calculated. In this subdivision the expression "child" includes a step-child, but does not include a child not born in lawful wedlock, unless such child has been legitimated under the provisions of the *Legitimation Act* 1898.	*Act No.* 15/1907. Section 30 (10). (10). A sum representing Twenty-six pounds for each child under the age of sixteen years, residing with and dependent upon the taxpayer.	*Act* 32/1912. (*Rates Act.*) Section 3 (*c*). (*c*) Every taxpayer, the taxable amount of whose income is under Three hundred and fifty pounds shall be entitled to a deduction from the tax payable by him of Six shillings in respect of each child under the age of sixteen years residing with and dependent upon such taxpayer. No person shall be entitled to the benefit of this provision unless he claims such deduction within thirty days from the time of the tax being demanded, and also furnishes to the Commissioner such particulars in support of his claim as the Commissioner may require.

MAINTENANCE OF RELATIVES.

Commonwealth.	New South Wales.	Victoria.	Queensland.	South Australia.	Western Australia.	Tasmania.
Nil	Nil	Nil	*Income Tax Acts* (*Consolidated*) 1902–1920. Section 13 (v).—Part. The amount of Twenty-six pounds in respect of the wife and each and every relative by blood or marriage of a taxpayer ordinarily resident in Queensland whose net income does not exceed Eight hundred pounds, if such wife or relative is wholly maintained by him ; The amount of Twenty-six pounds in respect of a female relative, whether by blood or marriage or by adoption during childhood, of a taxpayer ordinarily resident in Queensland whose net income does not exceed Eight hundred pounds, if such relative resides with him for the purpose of caring for any child or adopted child of his and is incapacitated either by age or infirmity and has not an income of her own exceeding Twenty-five pounds per annum and is actually dependent on him : Provided that if the net income of a taxpayer ordinarily resident in Queensland exceeds Eight hundred pounds the allowances to which he shall be entitled under any of the provisions of this paragraph shall be reduced by One pound for each Five pounds by which his net income exceeds Eight hundred pounds : Provided, further, that, in arriving at the net income of the taxpayer for the purposes of any of the provisions of this paragraph, the amount of any deduction which the taxpayer may be entitled to under any of such provisions shall be disregarded.	Nil	Nil	Nil

STATUTORY (GENERAL) EXEMPTION.

Commonwealth.	New South Wales.	Victoria.	Queensland.	South Australia.	Western Australia.	Tasmania.
Income Tax Assessment Act 1915–1918. Section 19 (1)–(4). 19.—(1.) In the case of a person (other than a company, an absentee, or a person who is not married and has no dependants) there shall be deducted, in addition to the sums set forth in the last preceding section, the sum of One hundred and fifty-six pounds less One pound for every Three pounds by which the income exceeds One hundred and fifty-six pounds. (2.) In the case of a person (not being a company or an absentee) who is not married and has no dependants there shall be deducted, in addition to the sums set forth in the last preceding section, the sum of One hundred pounds less One pound for every Five pounds by which the income exceeds One hundred pounds. (3.) When the income consists partly of income from personal exertion and partly of income from property the deduction under this section shall be made in the first place from the income from property, and when the deduction exceeds that income the excess shall be deducted from the income from personal exertion. (4.) For the purposes of this section "income" means the income of a taxpayer after allowing the deductions allowed by any other section of this Act.	*Act* 11/1912. Section 16 (1) (*a*). 16. (1) Except as hereinafter provided, the Commissioners shall deduct from the income of every principal taxpayer, not being a company or a taxpayer coming within the provisions of section nineteen of this Act, the moneys and expenses hereunder mentioned, and the amount of income remaining after such deduction shall be the income on which tax shall be payable:— (*a*) The sum of Two hundred and fifty pounds.	*Act* 2668/1915. Section 17 (*j*). (*j*) The income of every taxpayer not being a company so far only as regards income to the extent of One hundred and fifty pounds: Provided however that the income chargeable with tax does not exceed the sum of Five hundred pounds. Section 26. 26. In the assessment of the income of a taxpayer in his sole individual right the exemption of One hundred and fifty pounds as in this Act provided shall be deducted from income the produce of property, but if such income does not amount to One hundred and fifty pounds the difference or if there is no income the produce of property then the whole of the said One hundred and fifty pounds of income shall be deducted from the income from personal exertion.	*Income Tax Acts (Consolidated)* 1902–1920. Section 7 (3), (iv), (*a*), and (*b*). (iv) Provided further that— (*a*) A person (not being a company or an absentee) whose net income (whether derived from personal exertion or from the produce of property, or partly from personal exertion and partly from the produce of property) during the year in respect of which the assessment is made, does not amount to more than £200, shall not be liable to tax; (*b*) With respect to any person (not being a company or an absentee) whose net income (whether derived from personal exertion or from the produce of property or partly from personal exertion and partly from the produce of property) during the year in respect of which the assessment is made, amounts to more than £200 but does not amount to more than £1,000, a part, but not exceeding £200, of such income shall be exempt from the tax, and shall not be deemed to be part of the taxable income. The amount of such exemption shall be ascertained as follows:—The amount of £200 shall be exempt if the net income does not amount to more than £203. The amount of £199 shall be exempt if the net income is £204, and the amount of exemption shall be reduced by £1 for each £4 of net income in excess of £204, so that there shall not be any exemption if the net income is £1,000. In deducting the amount of such exemption the income derived from personal exertion, if any, shall be first resorted to. *See also* section 8 (proviso) under "Tax—Rates of."	*Act No.* 1200/1915. Section 22 (xi).—Part. xi. If the account is the account of a taxpayer in his sole individual right, One hundred and fifty pounds shall be deducted from the net amount of income the produce of property, but if such income does not amount to One hundred and fifty pounds, the difference shall be deducted from the income derived from personal exertion; . . . (under, "Losses to be set off . . . ."). Provided that— (*a*) no person who has been out of the State for the twelve consecutive months covered by the period under assessment, except an officer of, or person employed by, the State whilst so employed out of the State, shall be entitled to any deduction by way of exemption from income tax; (*b*) the provisions of this subdivision shall not apply to the account or income of any taxpayer being a company. *See also* section 9 of 1337 of 1918 under "Liability," "Exemptions — Active Service."	*Act No.* 15/1907. Section 16 (1).—*Provisos.* Provided that if the "income chargeable" from all sources of any person shall not, in the year next preceding the year of assessment, exceed One hundred pounds, such income shall be exempt from taxation: Provided also that if the "income chargeable" from all sources of any person who is married or has a dependant shall not, in any year next preceding the year of assessment, exceed One hundred and fifty-six pounds, such income shall be exempt from taxation. Section 2 (proviso) of of Act 25 of 1918 (Rates). Provided also that where the income chargeable from all sources of any taxpayer who is married or has a dependent amounts to £157, and no more, the tax payable by him shall not exceed One pound.	*Act* 32/1912. (*Rates Act.*) Section 3 (iii).—Provises. Provided that— (*a*) A person whose net income during the year ending the thirtieth day of June immediately preceding the year of assessment did not exceed the sum of— (*aa*) Two hundred pounds if such person is a returned soldier; or (*bb*) One hundred and fifty-six pounds if such person is not a returned soldier— and who is a widower or widow having a child under the age of sixteen years dependent upon him or her, or is married, shall not be liable for the tax: And that an unmarried person whose net income during the year ending the thirtieth day of June immediately preceding the year of assessment did not exceed the sum of— (*cc*) One hundred and fifty-six pounds, if such person is a returned soldier; or (*dd*) One hundred and twenty-five pounds, if such person is not a returned soldier— shall not be liable to the tax. Provided further that— (*b*) Where the taxable amount of the income from all sources in any year of a returned soldier who is a widower or widow having a child under the age of sixteen years dependent upon him or her, or is married, exceeds Two hundred pounds, such returned soldier shall be entitled to a deduction of One hundred and fifty-six pounds by way of exemption; and that where the taxable amount of the income from all sources in any year of a returned soldier, who is unmarried, exceeds One hundred and fifty-six pounds, such returned soldier shall be entitled to a deduction of One hundred pounds by way of exemption; And that where the taxable amount of the income of any person (not being a returned soldier or a company) from all sources in any year is not less than One hundred pounds, and is less than Four hundred pounds, such person shall be entitled to a deduction by way of exemption in accordance with the following scale:— Where the taxable amount of the income is not less than £ — And is less than £ — Deductions allowed. £ 100 — 110 — 70 110 — 125 — 60 125 — 150 — 50 150 — 250 — 40 250 — 350 — 30 350 — 400 — 20 400 and over — Nil *Act* 34/1912. (*Rates Act.*) Section 3 (iii).—Part. Where the income of any such person (including a returned soldier but not a company) is derived partly from business and partly from property the deduction allowed under this proviso shall be made from his income from business, and if his income from business is insufficient to allow him the full benefit of such deduction, then the balance of such deduction shall be made from his income from property. This proviso shall not apply to any income receivable by any person as a prize in any lottery authorized by law in Tasmania, but all such income shall be liable to taxation without any exemption whatsoever.

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.

President.

1922.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

REPORT

ROYAL COMMISSION ON TAXATION,

TOGETHER WITH APPENDICES.

SECRETARIAT LIBRARY
13 JUN 1925
MADRAS GOVT.

SECOND REPORT.

Presented by Command ; ordered to be printed, 29*th June,* 1922.

[*Cost of Paper* :—Preparation, not given ; 912 copies ; approximate cost of printing and publishing, £152.]

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.

No. 1.—F.7370.—PRICE 3s.

SECOND REPORT

OYAL COMMISSION ON TAXATION,

TOGETHER WITH APPENDICES.

EXISTING DIRECT TAXATION.

193. Prior to the War the only direct tax imposed by the Commonwealth was the Land Tax, under the *Land Tax Assessment Act* 1910. Presumably the magnitude of the financial obligations arising out of the War compelled further entry by the Commonwealth into fields of direct taxation, and the Land Tax was followed by the imposition of Estate Duties in 1914, of the Income Tax in 1915, of the Entertainments Tax in 1916, and of the War-time Profits Tax in 1917 (which did not apply to profits arising subsequent to 30th June, 1919). The present position is that the Commonwealth continues to levy

1. Land Tax;
2. Income Tax;
3. Estate Duties; and
4. Entertainments Tax;

while in each State there are also -

1. Land Tax;*
2. Income Tax; and
3. Probate or Succession Duties.

In South Australia and Tasmania there is also a State Entertainments Tax. In Tasmania the tax is collected by the Commonwealth on behalf of the State.

HARMONIZATION - HOW TO BE ATTAINED.

194. Three sets of circumstances, viz.: (1) the possession and exercise of concurrent powers of direct taxation by Commonwealth and States; (2) the magnitude of their respective Revenue requirements; (3) the numerous and marked divergencies, both in principle and practice, in the several Taxation Acts, render the harmonization of Commonwealth and State taxation peculiarly difficult. Close study of the various Taxation Acts of the Commonwealth and States, and the light which has been shed in the course of our inquiry upon the nature and extent of the resultant burdens imposed upon taxpayers, have led us to interpret the term "harmonization of Commonwealth and State taxation" more widely than have the majority of the witnesses who appeared before us.

195. For example, some witnesses considered that harmonization would be attained by -

(*a*) the adoption of one form of Income Tax return for both Commonwealth and State purposes; and

(*b*) the appointment of one collecting authority for all direct taxes.†

But, even if these reforms were found to be generally acceptable and practicable, they would only provide a partial remedy for the existing evils arising from duplication and complexity.

196. The question of allocation of spheres of taxation between the Commonwealth and the States was frequently discussed by witnesses, and much difference of opinion as to detail was exhibited. Practical agreement was shown to the extent of accepting as reasonable the allocation of Land Taxation exclusively to State authorities. Divergencies of opinion were expressed in connexion with the Income Tax. Apparently the elasticity and productivity of this tax and the difficulty of balancing the Budgets of the two authorities, if either authority were deprived of the revenue now derived from Income Tax, raised doubts as to whether reform could at present be extended beyond the point of appointing one collecting authority for both Commonwealth and State Income Taxes.

197. At this stage it will be well to review the successive steps which have been taken by Commonwealth and State authorities in the direction of securing uniformity of taxation legislation, the creation of a single collecting authority, and the adoption of one form of Income Tax return.

---

* In New South Wales the State directly collects Land Tax only from certain freeholds within the Western Division, the general provisions of the Land Tax Assessment Act being suspended in respect of lands situate within Shires or Municipalities in which tax is levied by the local authority upon the unimproved capital value of lands, and at a rate of not less than 1d. in the £1.

† An agreement (referred to later) between the Commonwealth and Western Australian Governments, under which the Commonwealth acts as collecting authority for the State came into operation on 1st July, 1921.

Previous Efforts to attain Uniformity.

198. **Conference of Premiers, 1916.**—At a Conference of Premiers, held in December, 1916, it was resolved that the Commonwealth Government and the Governments of the several States should direct their leading taxation officers to meet and prepare a uniform scheme for Income Tax, Land Tax and Probate Duty (rates excepted in each case).* Action was taken accordingly.

199. **Conference of Taxation Officers, 1917.**—The Conference of Taxation Officers met on the 13th March, 1917, and following days. The Report of that Conference, after quoting the above resolution, goes on to say

> The instructions to the Taxation Conference are headed by the words "Collection of Income Tax, Land Tax and Probate Duty by one authority," but there is nothing in these instructions to say whether it is intended that the Conference should express an opinion as to which authority should collect.
>
> Collection by one authority necessarily carries with it administration. So far as Income Tax and Land Tax are concerned, the collection by one authority will, if the recommendations of the Conference be given effect to, be a practicable one, but certain constitutional difficulties will require to be overcome, to enable the States to collect for the Commonwealth, or *vice versâ*.
>
> The question as to whether the administrative authority shall be Commonwealth or State is considered outside the province of the Conference. The respective Parliaments must decide.

200. **The Conference framed and submitted an Income Tax Bill—**

to take the place of the seven Acts now in operation in Australia. If it is adopted, the form of return of income to be filled in by taxpayers, both for Commonwealth and States purposes, will be in all respects uniform, and the irritating and confusing differences (to the taxpayer) done away with.

The uniform Bill has not yet been adopted by any of the States, and only partially by the Commonwealth.

201. **With regard to Income Tax Returns,** the Conference stated—

> As matters now stand, it would be extremely difficult to draw up a return in the particular States that would conform with the requirements of the Acts of the Commonwealth and States, so many and varied are the differences in the several Acts now in operation, but it is considered desirable that what can be done in this direction should be done before next year's forms are issued.
>
> An attempt will, therefore, be made by each State and the representatives of the Commonwealth to make the return forms coincide, as far as possible, with a view to ameliorating, even though it may be only to a small degree, the puzzling and irritating differences to the taxpayer.

202. **Conference of Premiers, 1918.**—At this Conference, which was held in May, 1918, the question of uniformity of Income Tax Laws, Commonwealth and State—after debate—was referred to the Taxation Officers present—the officers to confer with the Hon. E. G. Theodore, the Hon. Sir Richard Butler, and the Hon. James Gardiner. The following report was presented to the Conference before its rising by the Hon. J. C. L. Fitzpatrick (New South Wales):—

> Mr. Theodore, who has had this matter in hand, has had to leave the Conference, and has left with me copies of the determination arrived at by the officers who were asked to make investigations and come to conclusions in the matter. The questions put to those officers were these—
>
> (1) Assuming uniformity of Income Tax Assessment between the Commonwealth and the States to be impracticable, *e.g.*, that the following points of difference continue:—
>
> (*a*) Taxation of Companies' profits;
> (*b*) Taxation of Insurance Companies; and
> (*c*) Taxation of profits on realized assets;
>
> is a uniform return possible?
>
> (2) If so, what steps are necessary to accomplish it?
>
> (3) Prepare draft of uniform schedule.
>
> The replies received were—
>
> (1) Yes—if a "uniform" return means one which contains all the requirements common to both authorities, and at the same time the special requirements peculiar to each.
>
> (2) (*a*) The "basic" or income year must be the same for the Commonwealth and the States.
> (*b*) The respective States' Acts must be brought into line on the basis of the taxation officials' draft Act.
>
> (3) The drafting of a "uniform" return is a difficult task, and is not practicable within the limited time at our disposal.

---

* A further resolution with regard to uniform land valuation is referred to under the heading "Valuation" in the Land Tax section of this Report.

The setting out of the differences between the taxation officials' Bill and the Commonwealth Bill should be sufficient at this stage.

The State return and the Commonwealth return will contain the same requirements.

These returns should be issued by the respective Government Printers at the same time, and the date for lodgment should be the same for Commonwealth and State alike.

The colour scheme should be adopted—the States' returns to be one colour; the Commonwealth another.

The State return to have a docket attached reminding the taxpayer he must also fill in a return coloured (for Commonwealth purposes. The Commonwealth return to have a similar docket.

The differences between the Commonwealth Income Tax Assessment Act and the draft Bill proposed by the Taxation Conference are as follows:

Heading.	Commonwealth Bill (1918).	Conference Bill.
As to assessable income—		
Taxing dividends to shareholders	Included	Excluded
Five per cent. of the capital value of taxpayer's residence or holiday house	Included	Excluded
Gains and profits on sales of assets	Excluded	Included
As to deductions—		
State Income Tax	Included	Excluded
War-time Profits Tax	Included	Excluded
Five per cent. on calls to companies (other than mining companies) and full calls to mining companies	Included	Excluded
Interest on mortgage of property in respect of which 5 per cent. on capital value is returned as income	Included	Excluded
Contributions to Repatriation Department	Included	Not discussed
Sinking Fund to amortise expenditure on improvements on leased land, when the lessee has not tenant rights in the improvements	Included	Not discussed
Deduction on account of dependants	Included	Excluded as being dependent upon the general exemption

Resolution re Officers' Report.—The Conference resolved—

A. That the Report of the Committee be received, the Committee thanked for preparation, and a copy of the Report be forwarded to the Conference of Treasurers to be convened by the Acting Prime Minister.

B. That a copy of the Report be forwarded to the Acting Prime Minister.

203. **Conference of Treasurers, July, 1918.**—At the Conference of State Treasurers, held on the 17th July, 1918, the question of the collection of taxes by one authority was again mentioned, and it was resolved—

That Mr. Holman (New South Wales) and Mr. Theodore (Queensland) be appointed a Sub-Committee to consider and report upon the proposal to create the one collecting authority for the direct taxes of the Commonwealth and the States.

204. **Conference of Commonwealth and State Ministers, 1919.**—At a Conference of Commonwealth and State Ministers held in January, 1919, the Report of the Sub-Committee mentioned in the preceding paragraph was submitted. The Report showed that the two members constituting the Sub-Committee were in agreement on the following matters:

(1) The whole business of assessing and collecting Income Tax for the Commonwealth and States should be undertaken by an amalgamated Department.

(2) In States where a Land Tax operates, land taxation should also be placed under the control of the same Department.

(3) The formation of such Department need in no way restrict the right of the Commonwealth or States to rescind or amend their taxation laws.

(4) At the same time, a further approach to uniformity in the Acts must be made, *chiefly in connexion with the deductions and allowances* made under the Commonwealth and State Income Tax Acts, if any advantage is to be derived from the amalgamation.

(5) The joint administration of two Acts widely divergent upon these points, though practicable, would really amount to nothing more than the housing of the two existing staffs in one office, as each return would probably have to be dealt with by the two sets of officers. Very little, if any, economy would result from this.

205. After enumerating certain differences between the Commonwealth Act and the respective Acts of Queensland and New South Wales, the Report goes on to say—

(8) Our present opinion is that, if some working approach to uniformity were made upon points—

(*a*) exemptions; and

(*b*) deductions;

adequately trained assessors could deal with each taxpayer's return for both State and Commonwealth purposes, in spite of the divergencies on the other heads.

(9) Our proposal, therefore, is to establish a Bureau with such assessors in each capital, and to secure the passage of the necessary legislation by all the Parliaments, to obtain the necessary additional measure of uniformity.

(10) So far we are in agreement; but with regard to the control of such a Bureau, two alternative proposals have been put forward.

206. Mr. Theodore's proposal with regard to the control of the Bureau was that it should consist of two Commonwealth Ministers and three State Ministers; the Bureau to control the staff and to be responsible for appointments, promotions, dismissals, &c. The Chief Commissioner of Taxation to be solely responsible for the administration of the various Acts of the Commonwealth and State Parliaments relating to Income Taxes and Land Taxes. Certain provisions were also suggested to secure the supply to any of the Governments concerned of such statistics as might be required for legislative purposes.

207. Mr. Holman's scheme of control did not include any Ministers as Directors, but suggested a Department jointly controlled (as to the general business in each State) by the present State Commissioner of Taxes and the Deputy Commissioner for the Commonwealth in each State. Where any differences of opinion arose between the two Commissioners acting together in a State, then if these differences related to staff matters they were to be referred for arbitration to the Chairman of the Public Service Board or corresponding officer of the State. Where the differences of opinion arose *re* the interpretation of the Statutes, they were to be referred to a Central Committee, consisting of two State and two Commonwealth representatives, meeting under the presidencey of the Commonwealth Treasurer. The State representatives to be the Treasurers and Under-Secretaries of two States (for choice South Australia and New South Wales); the Federal representatives to be the Secretary to the Treasury and the Chief Commissioner of Taxation. One paragraph in Mr. Holman's Report states that, although the control is nominally in the hands of the Central Committee, it will be actually in the hands of the Federal Chief Commissioner. After some discussion on details, the Report was "received."

208. **Offer by the Commonwealth.**—At the same Conference (1919) the then Commonwealth Treasurer, the Right Honorable W. A. Watt, offered, on behalf of the Commonwealth Government, to collect the whole direct taxation of the States at one-third of the present cost to the States.

209. **Offer by the Government of Victoria.**—On behalf of the Government of Victoria, the Treasurer of that State, the Hon. W. M. McPherson, made a counter offer to that of the Commonwealth, in these words—

I am prepared to offer that Victoria will collect your (Commonwealth) taxation, *in Victoria*, at half what it is costing you at the present time.

The Commonwealth Treasurer replied—

I have thought it over, and I rejected it for reasons which I explained to the House of Representatives.

A reference to *Hansard* of 1st May, 1918, p. 4264, shows that the Treasurer, in introducing an amending Income Tax Assessment Bill (in which, he said, had been incorporated as many as possible of the recommendations of the Conference of Taxation Officers, 1917) (see paragraphs 200 and 202 above), went on to say (p. 4264)—

I have shown the principal differences between the Commonwealth proposals and those of the States, and I do not think the difficulties presented are insuperable. Although the Acts may differ, I think we could still provide, if the States are willing, for a uniform return; and the question is—Who shall collect the taxes if the Commonwealth and States come to an agreement? The proposition of the Treasurers of the States is that we should scrap our Taxation Officers and hand the work over to them because they were first in the business. In this connexion I am a half-and-half Federal and States man. I do not mind saying I am "*shandygaff*" on the question. The bulk of my experience and my work—legislative and administrative—has been in the State, and I do not believe that the change in arena has changed my feeling. But, looking at the question from the stand-point of simplicity, economy, and convenience to the taxpayers, there is no doubt as to what should be done. I can see, for example, that if we agreed to the States collecting the taxes, it would be impossible to destroy the Federal Taxation machinery that we have erected. In my dual experience I have been able to take both spheres into account, not unduly weighted in favour of either; and we are now looking for a track which the people of Australia would most approve. There are many people who, like most Companies, do business all over Australia, or in many of the States. If we decided to allow the States to collect the taxes tomorrow, there would still have to be a Federal Office to collate those people who make, perhaps, £1,000 in New South Wales, £12,000 in South Australia, or £500 in Victoria, and graduate their taxation in the Federal Account. It is impossible for us, if we are in the direct taxation business, to delegate our authority to the States and hope to do so economically. On the other hand, it is possible for the Federal machinery to be mobilized and organized so that the State machinery may disappear.

During the same speech, Mr. Watt also said (p. 1265)

After a close study of the question, I believe that with our present machinery we could collect the taxation of the States for half of what it costs the States, and I would be prepared, on investigations already made, to guarantee that very substantial saving.

210. **Repetition of Commonwealth Offer.** -At a Conference of Commonwealth and State Ministers held in July, 1920, the Prime Minister of the Commonwealth referred to the offer made by the Commonwealth Treasurer in 1919, and said -

That offer is still open, and so it is idle to deal with the question as to what the States are doing and paying for this work. Here is a firm offer to collect taxation at one-third the existing cost; not one-third the cost in each particular State, because some States may be doing it for more and some for less; but, taking the States by and large, we say we are prepared to do the work for one-third the existing cost.

No immediate response was made by the States, but, before the close of the Conference, it was intimated that the State Treasurers had agreed that there should be one collecting authority and a uniform Schedule.

211. **Board of Inquiry.** -The Conference also decided to appoint a Board to report upon the best means of giving effect to -

(*a*) One tax-gathering authority for the Commonwealth, and

(*b*) One form of return.

The Board of Inquiry appointed in accordance with that decision consisted of the Hon. James Ashton, M.L.C., of New South Wales (Chairman), Mr. Robert Ewing, Commonwealth Commissioner of Taxation, and Mr. R. M. Weldon, State Commissioner of Taxes for Victoria, as representing all the States except Western Australia. The Report of that Board, dated 23rd February, 1921, shows that, at its first meeting—

The Commonwealth Commissioner of Taxation submitted a proposal involving an amalgamation of the staffs of the Commonwealth and State Taxation Departments by transfer of permanent State Officers to the Commonwealth Service under the Commonwealth Public Service Act, except in the case of the State Commissioner of Taxes. The scheme provided that the latter officer should remain an officer of the State Service, and should have the free administration of the State law without interference from any Commonwealth authority. On the other hand, the Commonwealth Commissioner of Taxation would have the free administration of the Commonwealth laws without interference from any State authority.

The Commissioner of Taxes for the State of Victoria (Mr. R. M. Weldon), as representing all the States except the State of Western Australia, submitted that the control of administration of both Commonwealth and State taxation laws should be vested in a body representing the Commonwealth and State Governments.

212. **Recommendation of Board.**—With regard to item (*a*) of the Reference to the Board—the best means of giving effect to the principle of one tax-gathering authority for the Commonwealth—the Board by majority (the Chairman and the Commonwealth Commissioner) recommended the adoption by all States of a scheme on the lines of the arrangement entered into between the Commonwealth and Western Australia.

213. The Commissioner of Taxes for Victoria, in a Minority Report, recommended a scheme for the establishment of one tax-gathering authority for the whole of the Commonwealth, consisting of a Board of Control of—

five members, two members to be appointed by the States as their representatives, and to be selected from the present State taxation officials; two members to be appointed by the Commonwealth as their representatives, and to be selected from the present Federal taxation officials; the fifth member to be an outsider, with wide business experience, preferably a practising accountant, with a full knowledge of commercial law and practice, to be appointed by the Commonwealth and States jointly, and to be the Chairman of the Board.

214. **Majority Report of the Board.**—The following extracts from the Majority Report indicate the views taken of the principal points at issue :—

1. In considering the subject of one collecting authority for Commonwealth and State Land and Income Taxes, we consider the following points are fundamental :—

(i) To be acceptable to both State and Commonwealth Governments, any scheme for the collection of taxes by one authority should preserve to the respective Governments, inviolate and without surrender to any body, all their existing rights in regard to administration and control. All other rights, such as legislation as to the character of Taxation Acts and rates of tax, are already preserved fully by Constitutional enactment;

(ii) The object should be capable of achievement with considerable reduction in the present combined expenditure by Commonwealth and States. . . .

5. The Western Australian scheme thus clearly preserves the independence of administration of Commonwealth and State Laws, not only by the respective Commissioners, but by the respective Governments through those Commissioners. Each Government is thus free to make any special arrangements it may desire in connexion with the administration of its laws or the collection of its taxes, by consultation with and direction of one person only. There is no possibility of any opposition to these directions by persons representing any other authority, and there is thus no duality of control by Governments of any corporate body having united supervision over both Commonwealth and State taxation laws.

7. On the point of reduction in cost, the Commonwealth Commissioner of Taxation is satisfied from his investigations to date into the facts arising under the Western Australian agreement that the reduction in the present combined expenditure by the Commonwealth and that State will be two-thirds of the present State expenditure.

10. On the other hand, the scheme proposed by the Commissioner of Taxes for the State of Victoria involves the abdication of authority by the Commonwealth and State Governments in favour of a mixed tribunal. If it be contended that the respective Governments should, under the scheme, retain their present powers of control over the administration of their own laws, it follows that both the Commonwealth and all the State Governments might exert their control in such manner as to interfere with smooth administration or harmonious relations both between themselves and between the members of the suggested administrative body.

The scheme would introduce into the administrative control a person without experience in the administration of taxation laws, and would give him, as Chairman of that body, a commanding position in comparison with the positions to be occupied by his trained and expert colleagues. . . . .

12. . . . . Under the scheme recommended by the Minority Report, the question of cost remains at large, and, while certain additional expenditure is definitely foreshadowed, a guarantee of saving to the State such as is involved in the Commonwealth undertaking is entirely lacking.

215. On question (*b*) of the Reference to the Board, *i.e.*, as to one form of return—

. . . . the Board came to the conclusion that, while the State Taxation machinery laws remain in their present respective forms, and while existing conditions of administration continue, no practical advantage would accrue to taxpayers by the use of a combined form of return.*

THE WESTERN AUSTRALIAN AGREEMENT.

216. Between the date of the Premiers' Conference, 1920, above referred to and the issue of the Board's Report, an Agreement was entered into between the Commonwealth and the State of Western Australia, the main lines of which are indicated in paragraph 210. That Agreement is printed as Appendix No. 4 to this Report.

217. **Criticism of Agreement by Representative of States.**—As a member of the Board above referred to, Mr. Weldon, Commissioner of Taxes for Victoria, stated his reasons for dissenting from the recommendation to adopt the Western Australian Agreement as follows :—

The Agreement is unequal in its incidence, inasmuch as it practically places the control of the assessment and collection of the State taxes in the hands of the Commonwealth authorities notwithstanding that the States and the Commonwealth have equal rights and interests in this matter, and notwithstanding the fact that the States have indicated at various times through their Governments that they are not prepared to hand the assessment and collection of State taxes to the Commonwealth.

The sovereign rights of the States appear to be subordinated in the following ways :—

(1) Where the law of the State is identical with or substantially similar to the law of the Commonwealth, the Commonwealth Commissioner determines the interpretation (Clause 12). This limits the present powers of the State Commissioner in this connexion almost entirely.
(2) Bills fixing the rate of State taxes for the year are to be submitted by the Government of Western Australia to Parliament before the 30th September in each year (Clause 15). This is a dangerous clause, as it may possibly restrict the Government's discretion as to when it shall bring in the Budget, as it is a constitutional practice that Tax Bills should be introduced after the Budget.
(3) The Commonwealth Commissioner appears to have the power to decide what are reasonable statistics concerning State taxes that the States may require to be kept (Clause 17).
(4) Certain State taxpayers are given power to lodge their returns outside State jurisdiction, and on returns in the Commonwealth prescribed form (Clause 18*c* (1)).
(5) Prosecutions for offences against State laws are to be conducted by the Commonwealth (Clause 20*a*).
(6) When the offence is against both the laws of the Commonwealth and the State, the Commonwealth Commissioner decides under which law the prosecution is to take place (Clause 20*b* (1)).
(7) As a general rule, the prosecution shall be instituted under the law which provides the greater penalty. This, in effect, means the Commonwealth Law (Clause 20*b* (2)).
(8) The State Commissioner cannot defend an appeal to the Courts until the Commonwealth Law Officers approve (Clause 24). This is a distinct giving up of necessary State rights.

Position of State Commissioner.—The Agreement provides for the State Commissioner's independence with regard to his State duties, but since he will be required to carry out Commonwealth duties as a subordinate to the Commonwealth Commissioner, his independence is more imaginary than real. In a very little time the State Commissioner will become, in effect, a Commonwealth officer. The transfer of the State officers to the Commonwealth Public Service will materially interfere with and lessen his real authority over them, for their dominating interests will, necessarily, be more and more with the Commonwealth. They will be Commonwealth officers doing State work, and he (the State Commissioner) will

* A combined form of return has, however, since been issued for use by all taxpayers in Western Australia who are liable to payment of Income Tax.

be a State Officer in control of them (Clause 6). In the case of any difference in a Commonwealth matter, he is a mere subordinate. With regard to any difference that may arise in a purely State matter, how is he to give effect to his decision if his staff does not agree with him and the Commonwealth Commissioner does not support him? In the event of his position becoming vacant at any time a Commonwealth officer will probably be appointed to succeed him, as there will probably be no trained State officer available to take his place.

Further State Disadvantages. The Agreement may be terminated by six months' notice. This might result in a serious dislocation of a State's finance by making it impossible for the taxes to be got in during the particular financial year as the only taxation officer the particular State will have will be the State Commissioner; the other State officers will have been absorbed by their becoming Commonwealth Public Servants.

The arrangement does not take into consideration the probable growth and expansion of the Commonwealth and the States.

The effect of the Western Australian Agreement will mean that in a short time that State will lose its identity with respect to its management of the direct taxation concerned. It certainly has power to terminate in six months the agreement but should it do so at any time it will find itself without staff or records (which are indispensable to the proper working of a Taxation Office) as the records will be so interwoven with the Commonwealth records that the Commonwealth may point out that it is impossible to separate them into what is State and what is Commonwealth.

218. **Views of Under-Treasurer, Western Australia.**—The Under-Treasurer for the State of Western Australia, who was formerly Commissioner of Taxes in that State, furnished the Commission with a statement of his views upon the Agreement between the Commonwealth and Western Australia. Generally he indorses the criticisms of Mr. Weldon above cited, adding some further objections on points of detail. The general view he takes of the Agreement may be inferred from paragraphs 7 and 11 of his Statement, which are as follows:—

7. The only rights which the State retains under the Agreement are the power, through its Parliament, of prescribing the rates and incidence of taxation, and the power of obtaining such statistics relating to the taxes as it may desire.

11. In short, I regard the Agreement as expressing in legal form, not an amalgamation, but an absorption, a surrender by the State of valuable rights and executive power.

219. The Under-Treasurer's Statement is not only critical, but also constructive, in that he suggests a scheme somewhat similar to that recommended by Mr. Weldon. The suggestion is that in each State the assessment and collection of Commonwealth and State direct taxes should be by one authority, control to be exercised by a Board of three Commissioners, one appointed by the Commonwealth, one by the States acting jointly, and the Chairman by the Commonwealth and States acting jointly. While the Board would have general control, it is suggested that the Board should not make or be deemed to make any assessment, or collect or be deemed to collect any taxes, those duties being carried out in each State by two Chief Assessors, viz., one Chief Land Assessor in charge of the Land Branch and one Chief Income Assessor in charge of the Income Branch. The Control Board (the Statement suggests) should also be a Court of Appeal to hear and decide appeals from assessments of a Chief Assessor in any State; taxpayers to have the right on any question of law to carry the matter from the Board to the Supreme Court of the State or to the High Court or the Privy Council.

220. **Views of Queensland State Commissioner.**—The Majority Report of the Board was also the subject of criticism by the Queensland Commissioner of Taxes, a copy of whose memorandum to his Government has been supplied to us. The Queensland Commissioner quotes the fundamental rules laid down by the Majority Report, which may be shortly stated as requiring that any scheme for the collection of Commonwealth and State Land and Income Taxes by one authority should—

1. Preserve existing rights in regard to administration and control;
2. Effect considerable reduction in the present combined expenditure by the Commonwealth and States.

221. The Queensland Commissioner, agreeing on this point with the Minority Report, considers that the Majority Report fails to comply with its own rules. He says—

There is no doubt that under this recommendation the State Government would have practically no control over the administration of the Act.

222. On the question of cost, the Queensland Commissioner refers to correspondence which he had with the Federal Department, and which, considered in connexion with published figures of cost of collection in the States of New South Wales and Queensland, led him to the conclusion that the Commonwealth offer to collect for all States at one-third of their present cost is much below what would prove to be the actual cost.

223. This view may be compared with the offer mentioned above of the Victorian Treasurer to collect in Victoria the Commonwealth's direct taxes at one-half of the present cost to the Commonwealth. Assuming the respective offers of the Commonwealth and the State of Victoria to have been based upon an adequate study of the position, they are very important as indicating the large waste of public money involved in the continuance of the present separate administration of direct taxation.

224. As to the difficulties to the State which might arise owing to the Agreement being terminable on short notice, as also on other grounds, the Queensland Commissioner's views generally support those of the Minority Report.

225. **Views of South Australian Commissioner.**—The State Commissioner of Taxes, South Australia, furnished us with a copy of a memorandum he had submitted to his Government in criticism of the Western Australian Agreement. The views expressed in that memorandum are generally on the same lines as those of the State officers above quoted. The South Australian Commissioner, however, gives special emphasis to the question of cost of collecting. According to his statement, during the year ending 30th June, 1920, the Federal Income Tax collected in South Australia was £639,211, the staff employed numbering 156; while the State Office collected £662,334 with a staff of 40. He adds—

On the face of these figures, it is incomprehensible that the Federal Department can collect the revenue at a cheaper rate than the State.

There may be some special reasons for the apparent difference in this instance; and, in any case, the Commonwealth offer, as expressed by the Prime Minister (see paragraph 210) was based upon the aggregate cost to the States collectively.

226. **Western Australian Agreement—Comments by Commission.**—The Western Australian Agreement represents the first joint action taken by the Commonwealth and the States to reduce the administration cost, and the expense and inconvenience to taxpayers, arising from dual control. The criticisms directed against it include complaints that the Commonwealth has ceded too much in one direction and that the State has ceded too much in another.

227. The Majority Report and the Minority Report, as well as the witnesses from whose evidence we have quoted, all accept as fundamental the principle expressed in the Majority Report (see paragraph 214), viz., that—

to be acceptable to both State and Commonwealth Governments, any scheme for the collection of taxes by one authority should preserve to the respective Governments, inviolate and without surrender to any body, all their existing rights in regard to administration and control.

They do not, however, appear to have paid sufficient regard to what, in our opinion, is the main consideration which should govern reasoning upon the subject, and to which all other considerations must be adjusted. **That consideration is the sovereign right of Australian taxpayers to have the mechanism of taxation so designed and controlled as to impose the minimum of inconvenience and involve the minimum of cost.** Cost to the taxpayers cannot be reckoned only in terms of the amounts which the Commonwealth and State estimates show as the charge upon the consolidated revenue of the respective Governments for the maintenance of their Taxation Departments. That cost is indeed very heavy, amounting to about £750,000 per annum, but over and above this there is the cost to taxpayers for skilled assistance in the preparation of returns, and in complying with Departmental requisitions, which was estimated by one witness to be not less than £1,000,000 per annum. It is not only the larger taxpayers who have to incur such expense, but instances were brought before us showing that in numerous cases country taxpayers, primary producers and others, are forced to incur costs for journeying and for professional assistance in the preparation of returns and checking of assessments, often out of proportion to the amount of tax payable. It is not suggested that by any possible scheme the whole of these special costs to taxpayers can be avoided, but those costs are largely caused by the differences between the different Statutes with which taxpayers must comply; partly by complexities in the Statutes which may be greatly reduced; and, in the case of the Commonwealth particularly, by the fact that the general instructions or Office Orders which guide the administration, and which would also be a valuable guide to taxpayers, have not hitherto been accessible to the public.

228. The recommendations of this Commission will, it is hoped, lead to amendments in the first two respects, and the Commission is informed that these Office Orders will shortly be made readily available to the public. Access to this information should, in our opinion, have a material effect in reducing both the special expense now incurred by taxpayers and also the administrative costs, while it will tend to reduce friction between the taxpayer and the Department.

229. The Western Australian Agreement effects some useful reforms, *e.g.*, it makes possible a saving in the aggregate cost of collection of direct taxation (Commonwealth and State) in that State.* It tends to produce uniformity of Income Tax Law and of the interpretation of that Law; and it does away with the necessity for reference by taxpayers to more than one office. But by leaving intact all the differences between the Commonwealth and State Income Tax Law, its value is very greatly reduced, and **we do not recommend the adoption of a similar agreement by the Commonwealth and other States.**

CONTROL OF DIRECT TAXATION BY THE STATE.

230. We have considered a suggestion that the States should be given exclusive power to impose direct taxation, subject to an obligation to pay to the Commonwealth on a per capita basis such amounts as might be determined from year to year by the Commonwealth Parliament.

231. It is claimed in support of this scheme—

1. That there would be no practical curtailment of the present powers
   (*a*) of the Commonwealth, since the Central Government could still command revenue, and, if the State machinery failed, could itself collect from the individual taxpayer;
   (*b*) of the States, since each State would have the right within its own jurisdiction to determine the method and incidence of taxation levied to meet its financial obligations, including those to the Commonwealth.
2. That it would restore the position existing before the Commonwealth entered the field of direct taxation. (In this connexion it has been suggested that the retirement of the Commonwealth from that field would be in harmony with the intention of the framers of the Constitution.)
3. That it would do away with the (alternative) necessity for the enactment by all the Australian Legislatures, and the maintenance unaltered, of uniform Assessment Acts.

232. We are of opinion that the scheme would involve a very important curtailment of the present powers of the Commonwealth. Taking Income Tax as an example, the effect would be that the Commonwealth would have no voice in determining the rates, the mode of collection, or the nature or incidence of the tax. We consider it a sound principle that where any Authority is, by right and not by grace, directly or indirectly receiving revenue raised through taxation imposed upon its citizens, that Authority should, wherever possible, be charged with the responsibility of determining the nature and incidence of the taxation. A departure from that principle in the case of the Authority which has the predominant interest in the proceeds of a tax and the widest power to make it effective is specially to be avoided. (The acceptance by the States of the present per capita grant from the Commonwealth does not, in our opinion, infringe this principle.) The permanent exclusion of the Commonwealth from the whole field of direct taxation would tend to weaken the sense of responsibility of the citizens to the Commonwealth Government, a result which, in view of the paramount responsibilities of that Government and its financial needs arising out of the War, would be particularly undesirable.

233. The hypothesis upon which the scheme is founded is that the exclusive power of imposing all direct taxation shall be vested in the States, subject to an obligation to pay to the Commonwealth on a per capita basis such amounts as might from year to year be required by the Commonwealth Parliament. Apart from the probable legal difficulties arising out of the attempt to make effective a power coupled with an obligation of indefinite extent, the position which would be created if a State made default in respect of the payment to the Commonwealth would be full of menace to harmonious relations between the respective authorities.

---

* With regard to the saving in the aggregate cost of collection effected under the Western Australian Agreement, actual figures are not yet available as the agreement has not been in force for twelve months. The Minister for Works and Railways (the Hon. L. E. Groom) speaking in the House of Representatives on the subject, stated—

"The amalgamation of our Western Australian Branch with the State Taxation Department had led to an increase of £21,598. . . . . The expenditure of the Commonwealth Department in Western Australia in 1920-21 was £42,995, and the cost of the State Department in that year was £33,367, the two Departments costing £76,362. This year the amalgamated Departments are estimated to cost £65,986. That Agreement has resulted in saving the people of the Commonwealth and Western Australia a sum of £10,376 19s. 8d."

Had the expectation of the Federal Commissioner of Taxation that "The reduction in the present combined expenditure will be two-thirds of the present State expenditure" (see paragraph 214) been realized, the aggregate saving due to the amalgamation would have been £22,245. It thus appears that while under the agreement Western Australia benefits to the extent of £22,245 per annum, the taxpayers of Australia generally will, at least in the current financial year, have to make up the difference (£11,869) between £22,245, the sum of which the State is relieved, and £10,376, the real aggregate saving for the year.

234. **The majority of witnesses agreed that the levying of Income Tax would be more appropriate to the Commonwealth than to the States, and in this view your Commissioners concur.** It has been suggested that there would be equal appropriateness in the allocation to the Commonwealth of any direct tax of which the principle of aggregation is an important feature. But, in the case of Land Tax, the almost universal opinion of witnesses was that it more appropriately belongs to State authorities.

235. With regard to Income Tax, if that were levied only under the authority of State enactments, it is evident that the collection which now takes place as the result of the aggregation under the Federal Law of incomes derived from more than one State would cease. That in itself would reduce the revenue derived from Income Tax, and moreover would prevent the full operation of a principle which in our opinion is just. There is force in the statement by Professor Seligman (in discussing American Income Taxation) that—

> A State Income Tax cannot thoroughly succeed because of complications of inter-State taxation and the difficulty of getting at the income derived from inter-State sources. Moreover, as our Federal Income Tax develops, the confusion between State Income Tax and Federal Income Tax levied according to entirely different principles is bound to become greater. (Annals of the American Academy, 1915, p. 9.)

236. The ever-growing volume of inter-State business affords another effective argument in favour of the ultimate vesting in the Federal authority of the exclusive power to impose Income Tax under statutory conditions applying uniformly throughout the Commonwealth. State Taxation authorities find great difficulty in dealing with the question of apportionment of Company profits made partly in one State and partly in another. The following extract from a Memorandum supplied by the Victorian Commissioner of Taxes indicates the nature of the difficulty:—

> *Companies Trading in and out of Victoria. Inter-State Problems —which do not affect the Commonwealth.*
>
> (1) The Company may make a profit in Victoria and a loss in another State, and distribute in dividends an amount much below the Victorian profit;
>
> (2) It may make a profit in Victoria and a loss in another State, and pay no dividend at all;
>
> (3) It may make a loss in Victoria and a profit in another State, and declare a dividend, no portion of which is earned in Victoria;
>
> (4) It may make large profits in Victoria, and, in dealing with the whole of the Company's operations, only pay a small dividend, and at the same time carry a large amount of the profit to Reserve Fund, contrary to the principles guiding the taxation of individuals.
>
> The Victorian profit has to be ascertained in all these cases for apportionment of dividend purposes.
>
> The dividends shown in the taxpayer's return have then to be divided up on the ratio of the Victorian profit to the total profit. In some cases taxpayers hold shares in 30 different companies; the ratio in each of these companies will vary, and all the ratios will vary every year.
>
> The apportionment (in some cases it must be on an arbitrary basis) is always likely to be a strong point of difference between the taxpayer in receipt of dividends and the Department.

The State authorities also experience continual difficulty in regard to assessment and collection of tax in respect of Company shareholders residing in another State.

These Inter-State difficulties are, of course, not experienced by the Commonwealth administration.

237. So far as the effect of this scheme upon State finance is concerned, it is manifest that the power of the Commonwealth to require large payments year by year would necessarily limit the volume of taxation which the States could impose upon the citizens for State purposes only. The same effect in varying degree follows whenever two authorities are operating in one field by the same mode of taxation.

238. The suggestion that the retirement of the Commonwealth from the sphere of direct taxation would be in harmony with the intentions of those who drafted the Federal scheme appears to us to lack support. For example, Quick and Garran (Annotated Constitution, p. 132) say of the Constitution Bill adopted at the Adelaide Convention, 1891, and which in this respect remained unaltered by subsequent discussion, that—

> The Federal Parliament was given full powers of raising money, not only by Customs and Excise, but by every other mode of taxation; and the only conditions imposed upon this power were that Federal taxation must be uniform in all the Colonies, and that, on the adoption of a uniform tariff, trade between the Colonies should be free.

But the permanent expression of the intentions of the framers of the Constitution must be sought in the Constitution itself. The Constitution places upon the Commonwealth Government the sole responsibility for defence and for other national services, and, at the same time, as one means of discharging that responsibility, confers upon that Government full powers of direct taxation.

239. Viewing the proposal under comment from a general point of view, it may be said that it would have the effect of increasing State powers at the expense of the Federal, to that extent doing less than justice to the paramount responsibilities which the Commonwealth has been bound to assume in defence of those seriously-threatened national rights, the loss of which would have caused the destruction of every form of Australian citizenship.

CONCLUSIONS.

240. **Any scheme of harmonization or amalgamation which still leaves Commonwealth and State authorities both demanding revenue from the same people by the same mode of taxation can at best be only an imperfect remedy for the existing disabilities. There was practical unanimity of opinion among witnesses that a delimitation of spheres of taxation is desirable. The members of the Commission are of the opinion that only by a delimitation of spheres or allocation of subjects of taxation between the Commonwealth and the States can an ordered and satisfactory system of taxation be brought into being in Australia.**

241. Evidence has not been wanting of an insistent and growing desire on the part of taxpayers, and the discussions of Commonwealth and State authorities quoted in paragraphs 198 to 215 disclose a disposition on the part of the several Governments of Australia, to secure co-ordination of the present diverse and complex system of taxation. To the extent to which Commonwealth and States operate in separate and distinct spheres will the harmonization, simplification and economy of administration, which are the common objectives of the Governments and people of Australia, be reached.

242. Clearly any permanent delimitation of spheres of taxation would involve a surrender by one or by both authorities of existing legislative powers within specific areas. The permanent surrender by the Commonwealth of legislative powers in respect of any subject of taxation would involve an amendment of the Constitution. In the case of the States, however, such surrender could be effected without amendment of the Constitution by appropriate action under Section 51, Sub-section XXXVIII. of the Constitution, which provides that the Commonwealth Parliament may legislate upon—

> matters referred to the Parliament by the Parliament or Parliaments of any State or States, but so that the Law shall extend only to States by whose Parliament the matter is referred, or which afterwards adopt the Law.

243. In response to a question addressed by us on the subject, the Commonwealth Solicitor-General, Sir Robert Garran, expressed the opinion that the question whether a State power so "referred" to the Commonwealth could afterwards be taken away is one of some doubt. He inclined to the view that the conferring State could not revoke its grant of power by subsequent legislation—at all events when the power has been acted on by the Commonwealth under the grant.

244. Apart from the necessary Constitutional action already indicated, the delimitation of taxation spheres presents certain revenue difficulties which, though considerable, are not insuperable. The revenue question is rendered somewhat complex by reason of the varying amounts per head of the population collected through the same class of tax in different States. For example, in Victoria the Income Tax for the year 1919-20 equalled 12s. 4d. per capita, whilst in Queensland it amounted to £2 15s. per capita. For the same year, Queensland, with a population of 725,220, raised the sum of £459,188 from Land Tax, while the State revenue from that source in New South Wales, with a population of 2,002,631, was only £2,834. (It will be seen from the foot-note on page 68 that the collection of Land Tax by the State of New South Wales is at present almost entirely suspended in favour of Municipal and Shire Authorities.) The tabulated statements of Commonwealth and State revenue from taxation (see appendix 5) show in a convenient form the nature and approximate extent of the financial adjustments involved in any scheme of delimitation of taxation spheres.

245. In the examination of those figures, three things must be borne in mind—

1. That the amount of tax assessed for any given year will not necessarily correspond with the amount of tax collected in that year.
2. That, on account of the aggregation principle in Commonwealth taxation not being restricted by State boundaries, the yield of any particular tax, levied at the same rates, will be greater in the hands of the Commonwealth than in the hands of the States.
3. That the surrender of any tax by any one authority in favour of another does not necessarily entail any obligation upon the latter to impose that particular form of taxation upon its citizens. The retirement of any one authority from any particular field of taxation certainly frees that area for exploitation by the substituted authority, without increasing the burden of its taxpayers; but it would still be optional on the part of any authority to maintain its tax revenue in any way it sees fit.

246. A careful review of the financial obligations of the Commonwealth and the States and consideration of the existing exceptional circumstances has led us to think that an **immediate and permanent** surrender of any powers of imposing taxation by any of the Govermental authorities may be deemed inopportune, and we are unitedly of opinion that any scheme of taxation based on either a complete or partial allocation of subjects of taxation should preferably be inaugurated by a voluntary agreement between the Commonwealth and States, covering a period of years (say ten) long enough for the disclosure and solution of any unforseen difficulties.

We have sought, therefore, as preliminary to the adoption of a complete and permanent delimitation of spheres, to evolve a practical scheme capable of almost immediate application, which, while avoiding the inevitable delay involved in amendment of the Federal Constitution, would remove many of the disadvantages of the present conflicting systems.

247. In our consideration of a scheme for the delimitation of taxation spheres, we have borne in mind that it should, if possible, comply with the following conditions, viz. :—

1. It should not have any tendency to weaken the Federal spirit.
2. It should be capable of early application.
3. It should in the first instance be by voluntary agreement between the Commonwealth and the States.
4. It should be reciprocal.
5. It should not involve the financial embarrassment of either the Commonwealth or any State.
6. It should sensibly reduce the double taxation, the duplication of effort and the unnecessarily large expense involved in the existing system.
7. It should allocate to the respective authorities the spheres of taxation which seem most appropriately to belong to them.

248. The provisional scheme we recommend for immediate adoption provides, amongst other things, for the passing, **as soon as possible,** of uniform Machinery Acts in respect of Income Tax by the Commonwealth and the States, each authority also passing its own Rates Acts as at present. **The ideal is one Single Assessment or Machinery Act governing the collection of Income Tax throughout the Commonwealth.** Such an Act could obviously be only a Commonwealth Act, and the recommendation in the earlier portion of this paragraph for the passing of uniform Acts in respect of Income Tax by the Commonwealth and the States must be regarded as intended to apply only to the experimental period covered by the provisional scheme.

RECOMMENDATIONS.

249. **For the sake of clearness, we repeat that, as the ultimate and permanent solution of the problem, in our opinion—**

(*a*) **An allocation of subjects of direct taxation between the Commonwealth and the States should be made.**

(*b*) **The power to impose Income Tax should be exclusively vested in the Commonwealth.**

(*c*) **The power to impose other existing forms of direct taxation—Land, Probate or Succession, Entertainments—should be exclusively vested in the States, subject only to the overriding powers of the Commonwealth in the case of War.**

It is pointed out in this connexion that under Section 96 of the Commonwealth Constitution the Commonwealth Parliament may grant financial assistance to any State on such terms and conditions as Parliament thinks fit.

250. But, while the preceding paragraph represents our opinion as to the permanent solution of the problem, for reasons already given we favour an experimental period during which the allocation of subjects of taxation should be governed by agreement, and therefore—

We Recommend as a Provisional Scheme—

1. That the Commonwealth and the States mutually agree as to their respective fields of direct taxation for a period of (say) ten years.
2. That such Agreement provide for exclusive operation by the States during the specified period in the fields of Land, Probate and Entertainments Taxation—any such restriction to cease automatically in the event of War.
3. That during the currency of the Agreement the Commonwealth and the States retain the right to impose Income Tax.

4. That for the purposes of the Agreement, the Commonwealth and the States pass uniform Income Tax Assessment Acts.
5. That during the currency of the Agreement the Commonwealth be the administrative and collecting authority in respect of Income Tax for both the Commonwealth and the States.
6. That the cost of administration be divided between the parties to the Agreement upon a basis to be determined by three expert advisers, such as, for example, the Auditor-General of the Commonwealth, the Auditor-General of New South Wales, and a practising Public Accountant, to whom the matter shall be referred.
7. That as from the date of operation of the Agreement the Commonwealth retain the whole of the revenue derived from Customs and Excise Duties.
8. That, as a means of facilitating the financial adjustments which will become necessary under the scheme, especially in the early years of its operation, the Commonwealth grant such financial assistance as may be deemed to be reasonable to any State or States upon such terms and conditions as may be mutually agreed upon.

[From this Section of the Report Commissioner Jolly expresses dissent. See page 124.]

SECTION IX.

TAXATION AT THE SOURCE.

251. In the discussion on the subject of Taxation at the Source, one or two preliminary observations may be appropriate. The Commonwealth Income Tax Assessment Act is primarily based on the principle of a progressive or graduated individual Income Tax. In accordance with this principle, Companies' distributed profits are taxed in the hands of shareholders. Under the scheme of the Act, tax in respect of undistributed profits is paid by Companies. Under the several States Acts, Companies' profits are taxed only in the hands of the Companies prior to and irrespective of their distribution to shareholders. The States' method is generally, though incorrectly, designated "Taxation at the Source," but would be more accurately described as Company Taxation. The term "Taxation at the Source" correctly applies only to the method which tentatively levies tax at the point where income emerges.

252. The volume of evidence tendered in respect of Taxation at the Source may be regarded as proof of a wide-spread interest in the subject, and as affording some indication of the important issues involved in its consideration. The prominence given to the subject at the various Conferences of Premiers, Treasurers, and Taxation Officers, and the fact that it is one of the few remaining barriers to uniform Income Tax legislation in Australia, are doubtless contributory to the public interest manifested.

253. In their discussion of the subject, the majority of witnesses confined their attention to the application or otherwise of the system of payment of tax at the source to Companies' dividends. Some few, however, dealt with the suggestion to extend the system to deduction of tax by employers on all wages paid. The wider application of the system on the lines of the British Income Tax Act was not advocated by witnesses.

254. **The practice in Australia.**—The practice of Taxation at the Source as generally understood in Australia is almost wholly restricted to the taxation of Companies and absentees. The Commonwealth method of taxing Companies is to tax at a flat rate only the undistributed profits and the dividends and interest payable to absentees and to holders of debentures or share stock payable to bearer, subject (in the two latter instances) to certain specified adjustments. In New South Wales, Victoria, and Tasmania, Companies' profits (whether distributed or undistributed) are taxed at flat rates, with no refunds or adjustments, so far as individual shareholders are concerned. The Victorian Act (Section 42) constitutes every Company, Public or Municipal Trust, Body or Corporation, agent for the holders of debentures or bonds for the purpose of deduction of Income Tax payable on the interest thereon, but, we are informed, this provision is not enforced. In Queensland, local Companies are taxed under a graduated scale of rates, a distinction being made between Public Utility and Monopoly Companies. A flat rate applies in the case of foreign companies. In South Australia, Companies are taxed in the same way as individuals at rates applicable to income derived from property without statutory exemption. In Western Australia, Companies are taxed on profits at a flat rate under the Dividend Duties Act. Taxpayers who are recipients of dividends are required to include such dividends in their returns of income, and are assessed on their aggregate income, receiving credit for the dividend duty already paid by the Company.

255. It may therefore be stated in general terms, with sufficient accuracy to indicate the broad distinction between the two methods followed in Australia in respect of the taxation of Companies, that the Commonwealth method is to tax dividends in the hands of shareholders, while the

method adopted by the States is to tax Companies' profits without adjustments to individual shareholders. It may be mentioned in this connexion that the Commonwealth Income Tax Assessment Act provides (see paragraph 277) an incomplete measure of tax adjustment with shareholders in those cases where a Company has paid a dividend in whole or in part out of previously undistributed income upon which tax has already been paid by the Company (Section 16 (2A)).

256. **The practice in New Zealand.**—In New Zealand, Companies' profits are taxed at the source. To meet a hardship experienced by shareholders of small means whose principal or sole source of income is dividends from Companies, and, who through the Company in which they held shares, might be paying Income Tax on the highest scale, the *Finance Act* 1917 provides that, in the case of a taxpayer whose income for the year does not exceed **£400,** a rebate of tax may be made based upon the difference between the individual and the Company rates, so long as the dividend received, together with the rebate made, does not exceed 6 per cent. of the amount paid up on the taxpayer's shares (Section 37).

257. **The practice in Great Britain.**—(See also paragraph 273). The extent to which the system of Taxation at the Source is applied in Great Britain may be gathered from the fact that at the present time taxation is levied at the source and deducted at the time of payment, in the case of—

Dividends payable by Limited Liability Companies.
Debenture and loan interest.
Interest on all British Government "pre-War" securities and on certain securities issued since the War.
Interest on Colonial and Foreign Government securities paid through agents in the United Kingdom.
Annuities and other annual payments.
Mineral rents, royalties, and wayleaves.
Patent royalties.
Interest not paid out of taxed profits (*e.g.*, interest paid out of rates).
Interest and dividends arising out of the United Kingdom and payable by Colonial and Foreign Companies through agents in the United Kingdom.
Coupons for dividends payable abroad which are realized through a banker or coupon dealer in the United Kingdom.
Rents of property let to tenants.
Ground rents, lease rents, head rents, &c.
Mortgage interest.
Deposit interest in certain banks.
Salaries and pensions paid by Government Departments, including Army, Navy, Air Force, and Civil Services, and by Railway Companies.

A brief description of the method of collecting Income Tax under the British System of Taxation at the Source will be found in paragraph 273.

258. **The practice in America.**—The Federal Income Tax Act of 1913 embodied the principle of Taxation at the Source, which, we are told, gave rise to—

"considerable complaint from those charged with the duty of withholding the tax."

(See **Introductory Chapter,** which is described as being "almost wholly the work of Professor Robert Murray Haig," to *Montgomery's Income Tax Procedure* 1919, page 19.) And the same authority states (*Income Tax Procedure* 1919, page 21) that in the 1917 Act "The system of Collection at Source was virtually abandoned and a plan of 'Information-at-Source' was substituted, thus removing a prolific source of irritation and embarrassment."

It may be inferred from the remarks quoted that the "irritation and embarrassment" spoken of were largely due to the exacting conditions imposed upon those "charged with the duty of withholding the tax." Montgomery states that—

> Under the laws of 1913 and 1916, Collection of Tax at the Source imposed duties and obligations on practically every disburser of interest, salaries and wages, and on many tenants, lessees and fiduciaries. These provisions proved so burdensome that in the 1917 law the entire system was abolished, except as it related to non-resident aliens and interest on bonds containing a so-called tax-free covenant" (Chapter VII.).

259. In the presentation of the subject under review, we propose to discuss the issues involved in the following alternatives, viz. :—

(*a*) The taxation of Companies' profits without adjustments and the exclusion of dividends from shareholders' returns.
(*b*) Taxation at the Source and its wide application to various classes of incomes.
(*c*) The taxation of Companies' profits with subsequent adjustment in the individual assessments of shareholders.
(*d*) The maintenance of the present Commonwealth method of taxing dividends in the hands of shareholders, with equitable adjustment provisions in respect of dividends paid out of undistributed income upon which a Company has paid tax.

260. **Taxation of Companies' Profits without Adjustments and the Exclusion of Dividends from Shareholders' Returns (a).**—This method is in force in four of the States (see paragraph 254) and its adoption by the Commonwealth has been urged mainly on the grounds of its simplicity and effectiveness and the advantages of Income Tax uniformity in this respect with the States. The Victorian Commissioner of Taxes stated—

> From an administrative point of view, with a comparatively low rate of Company tax, and having regard to the simplicity and certainty with which the present method of no repayment operates in this State, I am not in favour of any change to a system of repayment.

The Victorian Commissioner of Taxes, though not in favour of any change to a system of repayment, made the following statement :—

> Much has been said to the effect that the Federal method—
>
> (1) Avoids the apparent injustice of the taxation indirectly of the small shareholder who would otherwise be either exempt altogether or taxable at a rate below the Company rate ;
> (2) Enables the principle of Aggregation of Income to be successfully applied ;
>
> and the inference is that the "Taxation at the Source" method fails in these two respects. This is not so, and, if desired, the States could establish the Principle of Aggregation to-morrow, applying it to all taxpayers and making adjustments by Rebates (and where necessary by Repayments), or they could confine the aggregation principle to the higher incomes.

261. With regard to the possibility of thus modifying the States' method of taxing Companies' profits, we do not consider it desirable that the whole of a Company's profits should be taxed in the Company's hands, even with subsequent tax adjustments with the shareholders, nor do we think it just to confine the aggregation principle to the higher incomes, or equitable to limit subsequent adjustment to taxpaying shareholders.

262. The Federal Commissioner of Taxation informed us in a written statement that the taxation of the profits of Companies in the hands of the Companies before distribution of any part of the profits to the shareholders, if the present rate of tax charged on Companies' profits (**2s. 8d.** in the £1) were maintained, and no adjustment were made with any shareholder would yield additional revenue estimated at **£1,197,036.** This estimate is based on the total profits of Companies for the year ended 30th June, 1920, discounted by 15 per cent., as it was recognised that :—

> These figures [those of the year ended 30th June, 1920] represent abnormal profits, and cannot be relied upon as a basis for an accurate calculation of profitable collections of Income Tax in the immediate or near future.

The Commonwealth Commissioner of Taxation further stated—

> There are slightly over 200,000 shareholders in Companies who do not at present pay Commonwealth Income Tax, because their total income is less than the amount of the general exemption applicable to their cases.
>
> Under this scheme, however, these persons would suffer either—
>
> (i) Reduction of their dividends by deduction by the Company of the Company's tax applicable to the dividend (even though the Company may not be officially regarded as paying tax as agent for the shareholders);
> (ii) Reduction in the amount of profits available for distribution by the Company ; or
> (iii) Reduction in the amount available to reserves, and therefore reduction in the value of the shareholders' interest in the Company.
>
> The number of shareholders who are taxable at less than **2s. 8d.** in the £ is approximately 25,364. These persons would suffer in similar manner, but to less extent than the present non-taxable shareholders. Their rate of tax on other income would be reduced, but their indirect tax on dividends would be increased.
>
> The number of shareholders who are taxable at more than **2s. 8d.** in the £ is actually 2,636. These persons would be benefited by reduction in their rate of tax payable on their income other than dividends, and by their indirect tax on dividends being reduced to the Company's flat rate.
>
> The revenue would therefore increase at the expense of approximately 225,364 persons, and would confer a distinct benefit by reduction of tax on 2,636 persons.

263. The Commissioner's Statement included the following figures :—

—	1 —	2 Figures discounted by 15 per cent. to form basis of estimate referred to in Paragraph 9.	3 Amount of Tax on discounted figures in Column 2 at present rate of 2s. 8d. in the £1.
	£	£	£
Total profits of Companies for the year ended 30th June, 1920, or the trading period taken in lieu thereof for taxation purposes ..	42,216,256	35,883,818	4,784,508
Amount of undistributed income taxed to Companies	22,830,640	19,406,044	2,587,472
Amount of dividends taxed to shareholders	10,612,929	9,020,990	1,202,799
Amount of dividends received by non-taxable shareholders ..	8,772,687	7,456,784	994,237
	£42,216,256	£35,883,818	£4,784,508

264. The Commissioner further stated that, if the method (*a*) were adopted—

> There would be a considerable reduction in working costs to the Department. It is extremely difficult to form an accurate idea of the probable reduction in costs, but it should amount to about £100,000 per annum.
>
> This gain to the Commonwealth would, however, be achieved at the expense of shareholders in Companies who individually would have been non-taxable, or whose rate of tax would be less than the Company's rate.

265. There is no need to traverse the arguments advanced in support of the method under discussion, beyond saying that its comparative simplicity and greater productiveness are purchased at the cost of so great a degree of inequity that we have no hesitation in unanimously deciding that it is a method which cannot be recommended for inclusion in a system of taxation which it is intended should rest upon "a sound and equitable basis."

266. **Taxation at the Source and its Wide Application to Various Classes of Incomes (b).**—The main argument adduced in support of the system of Taxation at the Source is that it affords the only adequate and effective means of protection of the revenue. This contention apparently rests upon three assumptions—first, that evasion of taxation exists or can exist to such an extent as to warrant the employment by the Department of means of prevention other than those afforded by the system of "Information at the Source"; second, that any practicable system of "Information at the Source", however well devised and skilfully administered, would prove ineffective in adequately protecting the revenue ; and, third, that the adoption of the system of "Taxation at the Source," with adjustments, would result in a net Revenue gain.

267. The extent to which evasion of taxation prevails in Australia must necessarily be largely a matter of conjecture. Several witnesses, including the Federal Commissioner of Taxation, expressed the opinion that deliberate evasion was largely practised by wage-earners in certain classes of employment, such as, for example, shearers, who, on account of the nature of their employment, are rarely long in one place, and are therefore hard to trace, and wharf labourers, who, it was alleged, frequently resort to the device of using different names. As against the general allegation of deliberate evasion in such cases, which is scarcely possible of positive substantiation, there has to be borne in mind that, in many instances, on account of broken time, strikes, illness, and other causes, the exemption limit may not have been reached.

268. The Federal Commissioner of Taxation, in his Seventh Annual Report, dealing with this question, says—

> The only remedy lies in legislation which would provide that the tax at a flat rate should be deducted from wages as they are paid. It would be necessary, however, to provide expensive machinery for adjusting the total amount of tax paid during a year, to the actual amount payable by each person so taxed. The question, therefore, to be decided is whether or not the tax collectable would be sufficient to pay for the additional adjustment machinery.
>
> I incline to the view that it would not pay unless the present minimum rates of Income Tax were considerably increased.

269. The Report also mentions that—

> The energetic action of the Department in tracing defaulting taxpayers has been continued with good results to the Revenue.

A special officer was sent into certain districts in one State, with the result that—

> In all 631 persons were prosecuted for their neglect of the law, and penalties and costs amounting to £1,713 were recovered. Now that the provisions of the Act are better understood, no further trouble from these districts is anticipated.

270. It is clear from the context of the Report from which the above quotations are made that, in some cases at least, investigation disclosed no fraudulent intent on the part of the taxpayer. The Report also shows that the Department is fully aware that evasion—inadvertent or wilful—exists and that the available resources of the Department are being employed with some measure of success in its frustration.

271. The most glaring instance of evasion of tax that was brought under our notice was one referred to by a State Commissioner of Taxation, in which the taxpayer's return disclosed a tax liability for the year amounting to £25 only. Investigation by the Department disclosed an income for the year of £280,000. The Commissioner stated—

> When our examination was over, he paid us £22,500 on that year.

In this case it was the "Information at the Source" which was available to the Commissioner which led to the discovery of the evasion.

272. The British practice of Taxation at the Source is usually quoted as the outstanding example of the financial effectiveness of the method.

273. The following brief description of the general method of collecting Income Tax under the British system is taken from Appendix 2 of the Report of the British Royal Commission on the Income Tax 1920 :—

> Whenever it is possible to do so, Income Tax is obtained by deducting it before the income reaches the person to whom it belongs. For instance, a trading company is required to pay to the revenue Income Tax at the standard rate on the whole of the profits made by it, without reference to the ultimate destination of the profits. Such a company on paying dividends to its shareholders is entitled to deduct and retain the amount of Income Tax appropriate to the amount distributed, and the shareholder thus receives his dividends, subject to this deduction of Income Tax. . . . . An individual whose income is *wholly or partly earned* renders a statement in order to claim the reduced rate of tax on his earned income, if his total income does not exceed £2,500. An individual whose income is *wholly unearned* renders a statement in order to claim the reduced rate of tax on his unearned income, *if his total income does not exceed* £2,000. . . . . When tax is deducted at the source, it is (with certain exceptions) deducted at the standard rate, which rate for the year 1918-19 is 6s. in the £. This rate represents the final liability in certain cases, but where the rate ultimately payable by a resident in this country whose income is taxed wholly or partly by deduction is less than the standard rate, certain adjustments must be made in order to give him the benefits of the relief to which he is entitled. For example, A's income, amounting to £1,800, is derived entirely from dividends taxed at the source at 6s. in the £. The " unearned " rate appropriate to a total income of £1,800 is 5s. 3d. only. A would be repaid 9d. in the £ on the amount of his income, on his making an application for relief, supported by evidence of the amount of tax which has been deducted from his income.

274. The embodiment of the principle of Taxation at the Source in the British Income Tax system dates from 1803. It is stated that the abuses to which the method of levying the tax by means of direct assessments upon the recipients of the income was open led the framers of the Income Tax Act of 1803 to make their approaches to the taxpayer in a less direct, but a more certain, fashion. Since its adoption in Great Britain, the principle has from time to time been more widely applied (see paragraph 257), till at least 70 per cent. of the present yield of the tax is collected at the point at which the income arises. Though Taxation at the Source has been applied in Great Britain for more than a century, it by no means follows that it is the best method for successful collection that can be devised in the modelling of an Income Tax system for Australia. When the revenue effect of Taxation at the Source in Great Britain is estimated, there is no possible comparison by actual experience with a strictly limited application of the system in conjunction with a well-developed system of Information at the Source. We do not for a moment question the strength and sincerity of conviction of the British advocates of the system; but it may be that familiarity with it in some measure accounts for its retention in Great Britain.

275. The rejection by the United States of America of the system of Taxation at the Source, after a short experience of its disadvantages as applied in America (see paragraph 258) seems to justify the doubt we feel as to its applicability to Australia. The following comments in Montgomery's *Income Tax Procedure* 1919 are interesting and informative :—

> By providing for a system of Information at the Source in the 1917 law, Congress took the first step in scientific procedure, so far as securing trustworthy information as to the personal incomes of individuals is concerned. Collection at the Source was so technical and annoying that its abandonment was inevitable.
>
> It takes many years to prepare the way for an effective system of reaching the incomes of all individuals who should pay a tax. If the present law calling for information as to the incomes of all individuals who receive annually $1,000 or more is strictly and impartially enforced, it will be the means of raising many millions of dollars in taxes hitherto untouched. . . . . But the enforcement of Collection at the Source in the case of those in receipt of incomes of, say, $1,200 to $2,000 per annum would have been impracticable. It is not unreasonable to call for, and it is not inconvenient to furnish, the information in regard to such payments.
>
> It is important to note that Information at the Source is not confined to business concerns, but to individuals as well, who, in their personal capacity, pay out certain sums aggregating $1,000 or more to any one person, firm or corporation during an entire year. Each individual must state the amount paid for rent of an apartment or dwelling house, to a chauffeur or servant, if the amount paid is fixed or determinable. (Chap. VI.)

276. There are at least two general objections to the system of Taxation at the Source. First, it involves the collection by the Crown of large amounts of money which in some cases it is not entitled to retain, and which in other cases are in excess of what it is entitled to retain, thus depriving a considerable body of taxpayers of the use of their money for varying periods; and, second, some Revenue gain (it is difficult to estimate how much) will be due to the failure of taxpayers, either through ignorance or neglect, to make and establish their claims for refund or credit. The objections to the system which we have indicated suggest the wisdom of restricting its application to the narrowest possible limits, lest some day public complacency may permit revenue gain to " outweigh every other consideration," even that of an " equitable distribution of the burdens of taxation."

277. **The Taxation of Companies' Profits, with Subsequent Adjustment in the Individual Assessments of Shareholders (c).**—This method would necessitate the repeal of the present Commonwealth law in respect of the taxation of a Company's undistributed income. Tax would be levied at a flat rate on all taxable profits in the hands of a Company before distribution of any part of the profits to the shareholders. The distinction between the method (*a*) discussed in paragraph 254 andsucceeding paragraphs and the suggested method under discussion is that, while under the former Companies' profits would be taxed, and there would be no subsequent tax adjustments by the Department with shareholders, under the latter the procedure presumably would be that

all shareholders sending in Income Tax returns would therein disclose all dividends received from Companies. These dividends would then operate under any graduated scale of tax in determining the rate of tax applicable, and the Department would give the taxpayer credit in his assessment for the amount already paid by the Company or Companies on his account in respect of any dividend disclosed in his return. In the case of shareholders whose total incomes are not large enough to render them liable to pay tax, some provision would need to be made by which they could claim and collect from the Department the tax paid by any Company or Companies on their account. It will be remembered that, according to the statement of the Commonwealth Commissioner of Taxation, there are slightly over 200,000 shareholders in this category. This method would lead to the payment by Companies of dividends, less tax paid or payable by the Companies, at the ruling Company flat rate.

278. The Commonwealth Commissioner of Taxation, in dealing with the suggestion (*c*) under review, stated that, if the proposal were adopted, the whole of the additional revenue (referred to in paragraph 262) estimated at £1,197,036, would be refunded or rebated to the shareholders, and that therefore no Revenue gain would result, but additional expenditure (in the establishment of a Refund Branch) would have to be incurred by the Department, which he estimated would reach £18,000 per annum.

279. It would appear that the conclusion of the Commonwealth Commissioner of Taxation, that the whole of the additional revenue resulting from the application of this method would be refunded or rebated to the shareholders, presupposes the complete effectiveness of the Departmental Information at the Source in the prevention of evasion of tax by inadvertence or intent, and the adoption of an eqully complete Departmental refund system. No estimate was furnished as to the revenue gain which might result from the failure of shareholders to establish claims in respect of refunds.

280. If revenue protection be urged as the main recommendation of the system of Taxation at the Source, as applied to Companies' profits, the question naturally arises as to whether the present rate of 2s. 8d. in the £, which is approximated to the average individual rate of tax applicable to taxpaying shareholders, is fixed high enough. *Complete indemnity against Revenue loss could only be secured by the levy from Companies of tax at the highest current individual rate.*

281. The arguments advanced in favour of the Collection at the Source of tax in respect of the whole of a Company's taxable income, with subsequent adjustments with shareholders, have failed to convince us that it represents any improvement upon the present Commonwealth system, or that it would be instrumental in securing a more equitable distribution of the burdens of taxation, or result in simplifying the duties of taxpayers in relation to returns. Taking into account the additional administrative cost which it involves, and having regard to the facilities for obtaining Information at the Source already used by the Department, and those open to it under the wide powers conferred upon the Commissioner (notably under Sections 55 and 56 of the Commonwealth Income Tax Assessment Act), the probability of the method of taxing Companies' profits (whether distributed or undistributed) with subsequent adjustments to all shareholders realizing any greater net revenue than the method we suggest seems extremely doubtful. Even should there be a net Revenue gain through failure from any cause on the part of shareholders to collect from the Department money due to them under the system, that would be a source of Revenue which should bring small satisfaction to the State, which in all its dealings should set the highest standards to its citizens. It would, in our view, be preferable for the State to suffer some loss of Revenue than, by the retention of money to which it can have no moral claim, to inflict injustice upon any section of its citizens, especially those least able to bear it. After full consideration we are of opinion that the disadvantages attaching to the method of taxing the whole of a Company's profits, even with subsequent adjustments to shareholders, are such as not to warrant us in recommending the adoption of that method.

282. **The maintenance of the present Commonwealth method of taxing dividends in the hands of shareholders with more equitable adjustment provisions in respect of dividends paid out of undistributed income upon which a Company has paid tax (d).**—Sub-Section (2A) of Section 16 of the Commonwealth Income Tax Assessment Act provides in effect—

(*a*) That a shareholder whose rate of tax in his individual assessment is lower than the Company rate, and who receives a dividend out of previously undistributed profits upon which the Company has paid tax, is entitled to a rebate of tax in respect of such dividend calculated at his individual rate;

(*b*) That a shareholder whose individual rate is higher than that of the Company is chargeable with additional tax based on the difference between his individual rate and that of the Company; and

(*c*) That a shareholder whose income is not sufficiently large to render him liable to tax receives no refund of the tax previously paid by the Company.

It is difficult to see any justification for this provision as it applies in the positions arising under (*a*) and (*c*), unless it be found in purely revenue considerations. But such considerations should not, in our opinion, be allowed to outweigh those attaching to "the equitable distribution of the burdens of taxation." The clear intention of the Income Tax Assessment Act is to levy tax on the total taxable incomes of all individuals at rates of tax appropriate to those incomes. In pursuance of this intention, dividends received are taken into account in arriving at a taxpayer's total taxable income. It is therefore clearly right that from the total tax assessed thereon there should be deducted such amounts as have already been paid to the Department. This is already done in the case of a taxpayer whose individual rate of tax is higher than that of the Company, but is done only in part in the case of a taxpayer whose individual rate of tax is less than that of the Company. A shareholder who is not a taxpayer receives neither rebate nor refund. This discrimination involves manifest injustice to the two latter classes of shareholders.

283. To remedy this injustice by the rebate or refund to all shareholders of the full amount of tax previously received from Companies in respect of their share of dividends paid out of undistributed income, some loss of revenue must be faced. The extent of that loss cannot be estimated with any degree of accuracy. The Commonwealth Commissioner of Taxation has expressed the opinion that the method (*d*) under review, if the adjustment provisions were applied only to taxpaying shareholders, while it would cast increased work upon the Department, would not involve any additional expenditure.

284. It may, however, be taken for granted that the work of the Department, as well as the cost, would be increased if refunds were made to non-taxpaying shareholders. The Commissioner also stated :—

> Administration of such a scheme would, in my opinion, be impracticable, unless taxpayers were required to include all dividends in their returns, leaving it to the Department to make the adjustment. Even then it would be difficult. The number of cases in which Companies distribute dividends out of past accumulated profits relatively to the total dividends distributed from current profits is small, but numerically they are fairly substantial.

He stated further :—

> The point for consideration in this connexion is that the Income Tax is an annual tax payable on the income of a year at the rate applicable to that income by the legal owner of the income. This would appear to mean that the Commonwealth Government should retain tax on Companies' undistributed income at least at the rate paid by the Company on that income.

If this is meant to express the view that, when a Company has paid tax on its undistributed income, the Government on subsequent distribution of that income should be entitled to collect excess tax from individual shareholders whose rate of tax is higher than that of the Company, but should not be required to make any allowances to those shareholders whose income is not taxable or whose rate of tax is less than that of the Company, it is a view which, in our opinion, is neither in harmony with the scheme of the Act nor in consonance with the principles of equity.

285. There can be no question as to the right of the Government under this scheme to retain tax paid by a Company on undistributed profits while they remain undistributed; but, when these profits or any part of them reach the shareholders' hands, then the primary intention of the Act—the taxation of the individual at his appropriate rate—is effected, and can only be equitably effected, by regarding the tax paid by the Company as tentative, because of the possibility of the subsequent distribution to the shareholders of the whole or part of the amount upon which tax has been collected. This view is, in our opinion, both logical and equitable, and justifies the claim for a refund or rebate, either to the Company or the shareholder, of the whole of that payment which the act of distribution by the Company establishes as having been tentative.

286. It was suggested in evidence that the Department, instead of making rebates in individual assessments of taxpaying shareholders and refunding direct to non-taxpaying shareholders, should allow full rebates in the Companies' assessments. It was considered that this would simplify the work and reduce the cost of the Department. Subject to safeguards we think the suggestion worthy of consideration.

287. A somewhat anomalous position arises under the present Act. In the direct levy of tax upon its undistributed profits, a Company is regarded as a legal entity, while in the partial adjustment of tax with taxpaying shareholders, under Section 16 (2A) of the Act when those profits are subsequently distributed, there is some recognition of the Company as having paid the tax in the first instance, not on its own behalf, but, in part at least, on behalf of those shareholders to whom rebate is made. Certain other equally anomalous positions arise through the operation of the provisions of Section 16 (2A) of the Act. For example, it is the usual practice in Australia for Companies to distribute dividends to their shareholders without deduction of any tax previously paid thereon. When, therefore (as is the present practice), the Income Tax Department allows full or partial rebate of tax in the assessments of shareholders whose individual returns include the receipt of a dividend paid out of previously undistributed profits, those shareholders in effect receive an additional dividend equal to the amount of tax so rebated. The

Department, however, does not require these taxpayers to include this additional dividend—or what is in effect an additional dividend—as income in their returns. Furthermore, if, as we contend, this rebate of tax be in effect an additional dividend, it would appear that that additional dividend has reached the hands of these particular shareholders in an indirect way through the Taxation Department, and without the formal sanction by resolution of the Company's shareholders.

288. It will be seen therefore that the present practice involves a three-fold discrimination—

1. Between taxpayers who receive dividends paid out of current profits (whose returns include the whole of these dividends) and taxpayers who receive dividends paid out of accumulated profits, and are allowed a rebate of tax in accordance with the provisions of Section 16 (2A) (whose returns include the dividend, but do not include the rebate, which is virtually an additional dividend).
2. Between those taxpaying shareholders who receive dividends paid out of accumulated profits and whose individual rate of tax is higher than that of the Company (who receive full rebate of tax) and those whose individual rate of tax is lower than that of the Company (who receive only partial rebate of tax).
3. Between taxpaying shareholders who receive dividends paid out of accumulated profits (who receive either full or partial rebate of tax) and non-taxpaying shareholders (who receive no refund of tax).

289. The position may be more readily appreciated by an example of what occurs under the present practice :—A, B, and C, are three shareholders, each receiving **£100,** being their proportions of a dividend paid by a Company out of accumulated profits, upon which profits the Company has paid tax at the rate of **2s. 8d.** in the £.

Assuming, for the purpose of illustration, that A, B, and C, are the only shareholders of the Company, and that the **£300** distributed represents the whole of the Company's accumulated profits, it is clear that the profits upon which the Company originally paid tax must have been **£346 3s. 0d.** The tax applicable to that amount is **£46 3s. 0d ,** and it s after the payment of that tax that the amount of **£300** is available for subsequent distribution to shareholders.

A has no other income, and is therefore non-taxable. He receives no refund, and the Government retains the tax already paid by the Company on his proportion of the accumulated profits, viz. .. £15 7 8

B has other income which, together with the amount of his dividend, renders him liable to payment of tax at the rate of **1s. 4d.** in the £. He receives rebate at the rate of **1s. 4d.** in the £ (being the difference between his individual rate of tax and that of the Company) equivalent to an additional dividend of **£7 13s. 10d.,** upon which he pays no tax, and the Government retains £7 13 10

C has other income which, together with the amount of his dividend, renders him liable to payment of tax at the rate of **5s. 4d.** n the £. He receives full rebate of the tax paid by the Company in respect of his proportion of the total dividend, and of this amount, viz., **£13 6s. 8d.,** the Government retains .. .. Nil

It will be seen that in the transaction indicated above, by which each of the three shareholders received the same amount from the Company by way of dividend paid out of accumulated profits,

	From the Company.	By way of Rebate.	Total.
A's return is	£100 0 0	Nil	£100 0 0
B's ,, ...	100 0 0	£7 13 10	107 13 10
C's ,, ...	100 0 0	15 7 8	115 7 8

290. Three methods are open by which the inequities arising out of the present discrimination may be removed :—

1. By the Department rebating or refunding the whole of the tax paid by Companies in respect of dividends paid out of accumulated profits direct to the shareholders, irrespective of whether or not they are taxpayers, and treating tax so repaid or refunded as income in sharehilders' Income Tax returns.
2. By the Department rebating or refunding the whole of the tax paid by Companies in respect of dividends paid out of accumulated profits to the Companies after the lapse of a reasonable time from the date of the payment of the dividends.
3. By amending the Act so that Companies shall not be taxed, either permanently or tentatively, in respect of their undistributed profits, and by deeming the whole of the undistributed profits of a Company to have been distributed amongst the shareholders whose individual returns would then include not merely their proportion of any declared dividend, but their proportion of the total profits of a Company, the sum representing which would then be taxable at the rate of tax applicable to each shareholder.

291. We do not favour the latter method, on the grounds :—

1. That it would mean that shareholders would be required to pay tax upon profits which are not received and may never be received by them, except in the remote contingency of the winding up of the Company, or indirectly through a more or less appreciable addition to the market value of their shares.
2. That it would tend to the distribution of too large a proportion of Companies' profits rather than the provision of means of development and financial stability by building up reserves.

292. Whichever of the two former methods may be regarded as the more practicable and simple one, it seems essential to the scheme that all taxpaying shareholders should be required to include all dividends in their Income Tax returns, and that a simple form of return should be prescribed for use by those shareholders whose total income does not reach the taxable amount. Shareholders would be materially assisted if it became the practice for all Companies to set out on all Dividend Warrants the proportion of the dividend which was paid out of past accumulated profits.

293. In dealing with the question of the taxation of Companies' profits, it becomes necessary to refer to the numerous and emphatic protests made by witnesses against the provision of Sub-section (2) of Section 16 of the Income Tax Assessment Act. This sub-section provides that—

> Where, in the opinion of the Commissioner, a Company has not in any year distributed to its members or shareholders a reasonable proportion of its taxable income, the taxable income of the company shall be deemed to have been distributed to the members or shareholders in proportion to their interests in the paid-up capital of the company, if the Commissioner is satisfied that the total tax payable on it as distributed income is greater than the tax payable on it by the Company.

We are strongly of opinion that the sub-section is open to two grave objections. The first is in respect of the authority which is conferred upon the Commissioner to determine whether or not a reasonable proportion of a Company's taxable income in any year has been distributed. Having regard to the varied classes of business engaged in, the competition and risks to which they may be subject, and the involved issues in relation to their development and consolidation, we are of opinion that all administrative decisions upon this point should be subject to appeal. The second grave objection is in respect of the limitations imposed upon the Commissioner. For example—Having decided that a reasonable proportion of a Company's taxable income in any year has not been distributed, the Commissioner is not allowed to express an opinion as to what amount would have constituted a reasonable proportion and levy tax upon that amount; but in all such cases the sub-section arbitrarily provides that the whole of the taxable income of the Company for the particular year shall be deemed to have been distributed to its members or shareholders. In our opinion, such a provision is unreasonable and harsh. The remedy we propose for both these objections will be found in our recommendations.

CONCLUSIONS.

294. For the reasons indicated throughout this section of our Report, we do not approve of the proposal for the adoption by the Commonwealth of the States' method of taxing Companies' profits, nor do we consider that the method of Taxation at the Source should extend beyond the present limits prescribed in the Commonwealth Income Tax Assessment Act. We are of opinion that Information at the Source, extended and efficiently applied, will afford increasing protection to the Revenue, while it is free from the disadvantages which, it has been shown, attach to Taxation at the Source.

RECOMMENDATIONS.

295. **We recommend**—

1. That the profits of Companies be taxed in accordance with the existing law, subject to amendment of Section 16 (2A) of the Income Tax Assessment Act, so as to provide for rebate or refund of the whole of the tax paid by a Company on the undistributed income which is subsequently distributed.
2. That Section 16 (2) be amended to provide that, where the Commissioner is of opinion that a company has not in any year distributed a reasonable proportion of its taxable income, he shall have the right to decide the amount which for the purpose of levying tax shall be deemed to have been distributed, and that against such decision the Company shall have the right of appeal to the Appeal Board.
3. That a simple form of return be prescribed for use by non-taxable Company shareholders, in which their dividends shall be disclosed.

[From this section of the Report Commissioners Jolly, Missingham, and Mills express dissent. See page 126.]

SECTION X.

DIFFERENTIATION.

296. **Definition of Term.**—The term differentiation is "used to express the discrimination which is made for income tax purposes between incomes that are earned by personal exertion and incomes which are not so earned."

297. **Demand for Differentiation in the United Kingdom.**—From the introduction of income taxation in 1798, public demand for some degree of differentiation in favour of incomes derived from personal exertion was carried on with remarkable persistence until 1907, when for the first time incomes derived from personal exertion were by Statute made taxable at a lower rate than incomes derived from property. The British Royal Commission (1920) on the Income Tax was satisfied "that some such discrimination is desirable and just." We concur in that view on the ground that "there is a real difference in taxable ability between the two classes of income in question."

298. **Terms used to denote the two classes of Income.**—Much discussion has taken place in Great Britain as to the terms which should be used to denote the two classes of income—*e.g.*, "permanent and precarious," "industrial and spontaneous," "industrious and lazy," "personal effort and investment," "earned and unearned." The two latter are the terms in use in Great Britain, but the British Commission, in view of objections made to the expression "unearned income," recommended the term "investment income." Terms such as "earned and unearned," "industrious and lazy," have been considered to convey moral implications, but in our opinion the point of view should be economic—*i.e.*, based primarily upon ability to pay. The terms "income from personal exertion" and "income from property" used in Australian legislation are in our opinion the most appropriate yet suggested.

299. **Degree of Differentiation in the United Kingdom.**—The British Royal Commission (1920), after considering the effect of increase and extension of family allowances (which they recommended) and also of recently increased estate and succession duties, which "tell in favour of earned income as against income derived from invested capital," recommended some diminution of the existing (Income Tax) Differentiation in the case of smaller incomes. The method they recommended was to diminish personal exertion income by one-tenth, for the purpose of arriving at the amount upon which tax should be levied. Subject to this reduction, the rate was then to be the same as in the case of incomes from property. They further recommended—

(*a*) that however large the earned income, not more than £2,000 earned income should rank for differential relief, and

(*b*) that the relief should apply, with that limitation, to incomes of all sizes, but for the purposes of Income Tax only, not for Super-tax purposes.

The maximum deduction from any income in respect of differential relief would consequently be £200.

300. **Differentiation under Income Tax Laws of Australian States.**—The following is a brief statement of the differentiation provided under the States Statutes :—

New South Wales	..	The rates on income the produce of property are uniformly one-third greater than those on income from personal exertion. There is also a super-tax operating equally on both classes of income.
Victoria	.. ..	The property rates are double those on incomes from personal exertion.
Queensland	..	The rates on incomes from property taper gradually from double that on the smallest income from personal exertion to identical rates on incomes of **£3,000** or over from either source.
South Australia	..	The differentiation in rates varies irregularly, ranging from 50 per cent. on smaller incomes to 22¾ per cent. on larger incomes from property over and above the rates chargeable on similar incomes from personal exertion.
Western Australia	..	No distinction is made, each class bearing the same rate.
Tasmania ..	..	The widest separation is on the lowest incomes, where those from personal exertion carry **3d.** and those from property **8d.**, moving through converging stages till on that portion of the income which exceeds **£2,000** both classes bear the same rate.

301. While in Western Australia there is no distinction between the two classes of income in New South Wales and Victoria the differentiation is uniform throughout; in South Australia, Queensland and Tasmania the rates move in converging lines and in the two last-named States they eventually coalesce.

302. **Differentiation under the Income Tax Law of the Commonwealth.** Differentiation under the Commonwealth Income Tax Law is effected by prescribing two scales of rates, one for incomes derived from property, and another for incomes derived from personal exertion. The scale for personal exertion incomes, which is much the lower, is a straight line up to an income of **£7,600.** The property scale passes from a straight line graduation, that is, a curve of the first degree, to one of the second degree, and, at a higher point of income, to a curve of the third degree. If the rate on **personal exertion** be represented by **100,** the percentage increases of property rate above personal exertion rate will be as shown in Column 4 of the subjoined table. Commencing at practical identity between the rates on incomes from personal exertion and those on incomes from property, the differentiation increases until at **£2,250** the rate on property income is about 82 per cent. greater than that from personal exertion. At **£3,000** the percentage falls to 81, and thence the two rates gradually converge, *e.g.*, at £8,000 the percentage has fallen to 37, at £30,000 to 6, and at £100,000 to 1·7. If the rate on **property** incomes be represented by **100,** the differences between the two scales, expressed as percentage deductions from the property line, give these results:—Commencing at practical identity between the rates on incomes from personal exertion and those on incomes from property, the differentiation increases until at **£1,000** it is 36 per cent., and between **£2,000** and **£3,000** about 45 per cent. Thence the two rates gradually converge, *e.g.*, at £8,000 the percentage has fallen to **27,** at £30,000 to 6, and at £100,000 to 1·7. The effect in these cases is shown in Column 5 of the table.

TABLE.

Taxable Income.	Tax on Income from –		If the Rate on Incomes derived from **Personal Exertion** be represented by 100 in each case, the rate on Incomes derived from Property will be represented by the figures below.	If the Rate on Incomes derived from **Property** be represented by 100 in each case, the rate on Incomes derived from Personal Exertion will be represented by the figures below.
	Personal exertion.	Property.		
Column 1.	Column 2.	Column 3.	Column 4.	Column 5.
£	£ s. d.	£ s. d.		
100	2 8 0	2 10 6	105	95
300	8 16 0	9 19 0	113	88
600	22 8 0	28 1 0	125	80
1,000	48 0 0	75 0 0	156	64
2,000	149 0 0	269 0 0	180	55
2,250	183 0 0	332 0 0	182	55
3,000	304 0 0	552 0 0	181	55
4,000	512 0 0	904 0 0	176	57
5,000	773 3 0	1,298 0 0	168	60
6,500	1,265 0 0	1,928 0 0	152	66
8,000	1,872 0 0	2,567 0 0	137	73
15,000	4,871 0 0	5,551 0 0	114	88
30,000	11,255 0 0	11,951 0 0	106	94
50,000	19,783 0 0	20,482 0 0	103·5	96·6
100,000	41,108 0 0	41,810 0 0	101·7	98·3

303. In some schemes of income taxation, of which those of New South Wales and Victoria are examples, the differentiation extends with an unvarying percentage of difference in rates throughout all incomes, but it is not uncommon, as in Queensland and Tasmania, to fix a point in income beyond which differentiation no longer directly operates. The indirect operation continues in some cases beyond that point, but with ever-lessening effect. The reasons generally given for limiting the range of differentiation are that beyond a certain point (necessarily chosen arbitrarily) an element of capital earning is considered to be present in the income if derived from business and, what is of more importance, the relative taxable ability of the taxpayer whose income is derived from his own efforts as compared with that of one whose income is derived from property is deemed to increase as income rises, until a point is reached when the necessity for the distinction ceases.

304. **Differentiation effected otherwise than through the Income Tax Laws.**—As already indicated (paragraph 299), taxation of property by means of estate or succession duties is often regarded as effecting a measure of differentiation in favour of incomes derived from personal exertion. As also shown in paragraph 299, the British system nevertheless includes a direct application of the principles of differentiation to income tax. On the Continent of Europe, the practice varies greatly. In Italy the subdivision of incomes for the purpose of differentiation purely in relation to income tax is carried further than in any other country. Income is divided into five classes:—

1. Income from certain investments of a gilt-edged class at a normal rate—
—say 10
2. Income from other capital and all perpetual revenues at a reduction of 25 per cent., making the rate—say .. .. 7·5

3. Income derived from the co-operation of capital and labour, *i.e.*, those produced by industry and commerce, at a reduction of 50 per cent., making the rate—say 5
4. Income derived from labour only by persons in private employment, and income from temporary revenues or life annuities, at a reduction of 55 per cent., making the rate—say .. .. 4·5
5. Income derived from salaries, pensions and allowances to persons employed by the State, the Provinces or the Communes, at a reduction of 62½ per cent., making the rate—say .. .. 3·75

305. In Berne, the income is divided into three classes :—
1. Income from capital, carrying tax at the normal rate—say 10
2. Income from life annuities and pensions, carrying tax at 80 per cent. of the normal—say 8
3. Earned income carrying tax at 60 per cent. of the normal—say .. 6

306. In Spain the Income Tax is linked with an Industry Tax, and in addition to differentiation in the former, running into six classes, there are in these classes five " tariffs," which provide a further differentiation according to :—
(*a*) Character of the business.
(*b*) Its importance.
(*c*) The importance of the locality in which it is conducted.
(*d*) The motive power used in the output ; and
(*e*) The method and nature of the output.

307. In some other Continental countries differentiation, so far as it exists, results from the combined operation of a tax upon the capital value of property and a general but undifferentiated Income Tax. Taxes upon property in various forms have generally preceded in date the imposition of Income Tax, and possibly in some cases the differential effects which attract so much notice when rates are increased and when an Income Tax is added to the national scheme of taxation, were not deliberately designed. The concurrent operation of Property Tax and Income Tax is usual throughout the German States and also in Denmark, Norway and some of the Swiss Cantons.

308. In some other countries, including Saxony, Bavaria, Austria and Hungary, instead of a separate tax on the capital value of property, there is a separate tax on the yield from property. For example, in Bavaria, side by side with the general Income Tax, there are a Land and House Tax, a Business Tax, and a Dividend Tax, which are charged on the annual or estimated yield of the subject property. Another method is the taxation of the capital value of property combined with an Income Tax confined to income not derived from property (income derived from such property being exempt under the latter tax), the rates of the two in such cases being fixed so as to produce a degree of differentiation in favour of the earned income. The most highly developed examples of this method are found in Switzerland and Holland. A further variant is found in the method of loading the assessment under a General Income Tax with a fraction of the value of any property possessed by the taxpayer. Of this, the outstanding example is Sweden. Under the system in force in that country, one-sixtieth of the capital value of any property possessed by the taxpayer is added to his income in order to arrive at the amount upon which income tax is charged.

309. Under Commonwealth legislation, as under that of all the States, taxes are imposed upon unimproved land values and also upon property passing at the death of the owner. To the extent to which these taxes operate, it has been contended that they constitute differentiation against incomes from property apart from that embodied in the Income Tax Statutes.

310. **Differentiation—How should it be measured.**—An argument has been presented with the intention of showing first—the principle upon which differentiation should be measured, and second, that, in view of the differential effect of estate duties, differentiation should disappear from Income Tax Statutes. That argument may be briefly summarized thus :—

(1) That an equitable measure of differentiation is the percentage of average income which if invested annually at compound interest during the period of active earning (assumed to be 40 years) would enable an annuity to be purchased securing to a married couple during the continuance of both or either of their lives an income equal to the average income of the active period, less the invested percentage. (Figures have been given to show that the necessary percentage is in the neighbourhood of 9 per cent.)

(2) That annual premiums paid by the recipient of income the produce of property to secure at death an amount equivalent to the estate duty which would then become leviable should be viewed—
(*a*) As an added Income Tax, and consequently
(*b*) As measuring the degree of Income Tax differentiation which indirectly effected by the Estate Duty Act.

(3) That, viewed as added Income Tax, the premiums payable by a property-owner to secure at his death an amount equivalent to the estate duty constitute a degree of differentiation exceeding the percentage of saved and invested income required as in No. 1 above, and that consequently no differentiation should be allowed under Income Tax Acts.

311. As to No. 1, it may be said that the argument assumes an ideal prudence and the existence of ideal conditions under which that prudence is to be exercised. In view of the vicissitudes experienced by the great majority of persons dependent upon income from personal exertion, such as uncertain conditions of employment, variable remuneration, ill-health of the breadwinner or his family, &c., it can never be reasonably assumed that a large percentage of taxpayers will be in the position to provide for themselves in the efficient manner contemplated by the theory advanced. With regard to the argument summarized in paragraph 310 (2), that premiums paid to provide for estate duty should be viewed as an added Income Tax, economic opinion may be quoted for example, Sir J. C. Stamp, writing in the *Edinburgh Review*, October, 1919, says :—

> Differentiation between incomes derived from capital and income derived from earnings used to be opposed in England on the ground that the purpose was effected by the death duties. It was argued that, if one man has £1,000 from earnings and another £1,000 from land, and if the latter provided for the source to be kept intact by paying out of his income an annual insurance against the death duty, his effective taxation would be greater. But this reasoning is not entirely sound. The insurance payment cannot be regarded as made to insure that the income is maintained intact during his own life. It is voluntarily paid to insure a similar and undiminished income for some one after the insurer's death.

312. Insurance premiums paid during the life-time of a property-owner for the creation of a fund to be applied in payment of succession duties, thus preserving an estate intact, or for other prudential or charitable purposes cannot, in our opinion, be viewed as in any sense an additional Income Tax, deferred or otherwise, and consequently cannot be regarded as adding to any degree of differentiation which is effected by Income Tax Statutes. If the property-owner, instead of making payments to an insurance company, chose another form of investment as a means of providing for the payment of estate duty at his death, could the payments made on this account be properly regarded as an additional Income Tax and so constituting a differentiation against income from property ? We think not.

If we look at the position of the two persons referred to in the argument under review, namely :—

(1) The income earner who puts by a percentage of his income during the period of active earning with a view to acquiring an annuity to carry him through the years when his earning power may have ceased, and

(2) The person having a similar income from property,

it will be seen that a marked distinction exists. The income earner must provide about 9 per cent. of his average income for, say, 40 years. At the age of 60 the expectation of life is about fourteen years, and at the age of 65 it is about eleven years, so that in many cases saving continued throughout the whole life period of active effort will result only in the acquisition of an annuity for one or other of these comparatively short periods. When such a person dies, apart from the continuance of the annuity to his wife if she survives him, his whole capital savings will have disappeared, and there will be nothing to hand on to anybody. The property-owner, however, by setting aside, not 9 per cent. of income for 40 years, but (on the basis of current insurance rates, about) 2·1 per cent. on the amount of succession duties for 30 years (or possibly for one year only*), will be able to pass on to his successor, without any reduction due to estate duty, the same income which he himself has enjoyed.

The person who (by hypothesis) provides the annual insurance payments can never be the actual payor of the estate duty, nor can the annual payments he makes have the effect of maintaining intact the income *he* enjoys, but would, of course, have a contrary effect.

313. **Administrative Saving if Differentiation Abolished.**—It has been suggested that the abolition of Differentiation in Income Tax would "make for saving in the expenses of administration. That may be admitted, but, in our opinion, that action would cause a deep sense of injustice in the minds of a majority of taxpayers.

314. **Retention of Differentiation in Income Tax Law.**—The generally undesigned, remote, uncertain, and little-understood differential effects upon Income Tax produced by the operation of Estate or Probate Duties would, in our opinion, be no sufficient or satisfactory substitute for Differentiation, as expressed directly through an Income Tax Statute. As shown above (paragraph 310), we do not accept the contention that Estate Duties can properly be regarded as effecting a real Differentiation of Income Tax. We may point out that, if our recommendations in the "Harmonization" Section of this Report be adopted by the Commonwealth and the

* It is assumed that the payments will continue for 30 years, this being taken as the average interval between successions, but the whole amount covered by the policy would be payable if the insurer died immediately after making the first premium payment. Of course, when the death occurs the estate duty becomes payable.

States, the Commonwealth will cease to impose Estate Duty, and consequently will be unable to give effect to the principle of Differentiation except through Income Tax. The allowance in Income Tax to personal exertion incomes, by means of Differentiation, is in most cases the only method by which the depreciation of the human machine can be adequately recognised in taxation, or by which that recognition can be made clearly perceptible to the great body of taxpayers. We are of opinion that the principle of Differentiation is one which should be retained, and that it should be retained by specific inclusion in the Income Tax Law.

315. **Taxation of Property Acquired by the Taxpayer.**—Objections have been raised to the imposition of tax at a higher rate in the case of property acquired by the taxpayer, as contrasted with the case of property inherited. No doubt, such property is frequently acquired by industry and thrift, although there are many cases where the events which lead to its acquisition are of the nature of happy accidents. The argument against taxation of income from such property at differential rates is that it tends to discourage thrift. This, in our opinion, has but little force, and any such effect will generally be outweighed by the sense of security and confidence given by the growing acquirement of a permanent source of income. The argument also loses sight of the fact that the allowance to personal exertion incomes may help in creating and sustaining the impulse to save.

This discussion throughout, while mentioning Commonwealth Estate Duty, applies also to the Succession or Probate Acts in force in the States.

316. **Degree and Scope of Differentiation.**—The Statutes of different Australian Legislatures prescribe degrees of Differentiation, which, represented by a percentage deduction from the higher (property) rates to reach the personal exertion rates, range from zero to about 62 per cent. In considering this question, two points arise for decision :—

1. Whether there shall be any differentiation of incomes for taxation purposes.
2. If differentiation be accepted—
   (*a*) Upon what scale shall it be based ?
   (*b*) Shall it be carried throughout all ranges of income ?

As to 1, we have already indicated our opinion that differentiation should form part of the Income Tax law. As to 2 (*a*), we have carefully considered a number of different scales of differentiation, and have decided to recommend the scale shown in more detail in paragraph 319. As to 2 (*b*), we are of opinion that differentiation should cease absolutely at a certain point of income. In the scale we suggest that point is reached at **£4,500.** In some Income Tax laws, what may be termed direct differentiation ceases at a certain point of income, but the effect is carried forward, though with diminishing influence, throughout all incomes. For example, in Tasmania, where direct differentiation is applied to incomes up to **£2,000,** the effect is extended, since the rates common to both classes of income are only applied to that portion of the income which exceeds **£2,000.** In the scheme we recommend, not only does direct differentiation cease at the selected point of income, but for incomes of that amount and over the whole effect of differentiation vanishes, as the undifferentiated rates then apply back to the lower stages of income. In our view, the carrying forward of differential effects throughout all ranges of income is not in harmony with the principles upon which differentiation is based.

317. **Method and Scale of Differentiation recommended.**—In our opinion, Differentiation should be effected, not as at present, by prescribing two scales of rates, one for incomes derived from property, and another for incomes derived from personal exertion, but by :—

(*a*) Prescribing one basic scale of rates applicable to all taxable incomes, and
(*b*) Making a percentage deduction from income derived from personal exertion for the purpose of arriving at the taxable income to which the scale of rates shall then be applied.

The percentage deduction from income we suggest is 15 per cent. from all incomes up to **£1,500,** the percentage being reduced from that point at the rate of 0·005 per cent. upon each successive £, or one-half per cent. on each successive **£100,** until the vanishing point is reached at **£4,500.** Thus, to take a few examples from the Table below, the method will work out in this way :— Where the (otherwise taxable) income is **£200,** this sum is first reduced by 15 per cent., which brings it to **£170** ; tax at the rate applicable to **£170** is then assessed. At **£1,500** the deduction from income at 15 per cent. is **£225,** so that the taxable income is **£1,275. At £2,800** the percentage deduction has dropped to 8½ per cent., which applied to **£2,800** amounts to **£238,** thus reducing the taxable income to **£2,562.** At **£4,400** the percentage deduction is only one-half per cent., and at **£4,500** it vanishes completely. The result is that the whole of an income of **£4,500** is charged at the same rate, whether it is derived from property or from personal exertion—that is, no part of it receives differential treatment. The same remark applies, of course, to incomes exceeding **£4,500.**

318. **Effective Reduction arising from Differentiation.**—One feature common to all applications of differentiation by percentage deduction from income is that the effective reduction in tax is rather greater than that represented by the figure of differential percentage. This arises from the fact that on any progressive scale of tax a reduction in the amount of taxable income operates in two ways, viz., by reducing the amount upon which tax is leviable, and by rendering it liable to a lesser rate of tax. For example, an income of **£300** reduced by 15 per cent. amounts to **£255.** Using the rates now in force under the Commonwealth Act in respect of income from personal exertion, the effective percentage tax deduction in favour of the taxpayer is not merely 15 per cent., which the scale prescribes, but for the reasons just indicated is over 19 per cent. Somewhat similar effects, but of greater volume, arise from methods which prescribe a percentage deduction of income and carry that deduction through all ranges of income. The effect in that case is that, assuming as in the British Commission's recommendation, that **£200** shall be deducted from all incomes above a certain point in order to arrive at the taxable income, a taxpayer will receive a different advantage according to the position he occupies upon the scale of incomes, and the actual benefit in tax in that method is continually growing as incomes rise to the higher levels.

The method we have adopted, it will be noted, withdraws absolutely the differential advantages as soon as the income reaches the selected terminal.

319. The following is the table referred to above (paragraph 318).

Table showing effect of Recommended Scale of Differentiation. The rates –column 4 –are those of the scale of graduation recommended in the Report –Basic Rate **5d.,** increasing by **0·005d.** for each successive **£1** (or ½d. for each successive **£100).** The figures in column 7 show the tax under the present Commonwealth personal exertion rates in respect of the incomes in column 1.

(1) Income.	(2) Percentage deduction from income on account of Differentiation.	(3) Taxable income when Differentiation applied.	(4) Rate, *i.e.*, rate appropriate to income shown in column 3.	(5) Tax.	(6) Effective percentage reduction of rate due to the deduction from income of the percentage shown in column 2.	(7) Present Federal Tax Personal Exertion.
	%	£	*d.*	£ *s.* *d.*	%	£ *s.* *d.*
50		42	5·21	0 18 3	16·64	1 2 8
100		85	5·425	1 18 5	16·16	2 8 0
200		170	5·85	4 2 11	17·13	5 6 8
300		255	6·275	6 13 4	17·89	8 15 11
500	15	425	7·125	12 12 4	19·25	17 6 7
800		680	8·4	23 16 0	20·66	34 2 6
1,000		850	9·25	32 15 3	21·38	47 19 9
1,500		1,275	11·375	60 8 7	22·65	91 19 7
2,000	12½	1,750	13·750	100 5 3	19·79	149 5 11
2,400	10½	2,148	15·740	140 17 6	17·13	204 15 0
2,800	8½	2,562	17·810	190 2 5	14·23	268 14 8
3,200	6½	2,992	19·960	248 16 8	11·13	341 5 0
3,600	4½	3,438	22·190	317 17 5	7·86	422 5 11
4,000	2½	3,900	24·500	398 2 6	4·45	511 17 6
4,400	½	4,378	26·89	490 10 4	0·91	609 19 8
4,500	0	4,500	27·50	515 12 6	0·00	635 16 11

RECOMMENDATIONS.

320. **We recommend :—**

1. That the principle of differentiation be retained in Income Tax legislation.
2. That Differentiation be based upon prescribed deductions from certain incomes derived from personal exertion, which incomes so reduced shall then become chargeable in accordance with one specific scale of rates applicable to all incomes.
3. That differentiation in favour of incomes derived from personal exertion be effected :—
   (*a*) in respect of incomes from **£1** to **£1,500,** by making a deduction of 15 per cent. from assessable income, in order to arrive at taxable income.
   (*b*) in respect of incomes from **£1,501** to **£4,500,** by making deductions from assessable income, in order to arrive at taxable income, of percentages varying (on a reducing scale of 0·005 per cent. for each successive £, or one-half per cent. for each successive £100) from 14·995 per cent. to zero.
4. That from all incomes of **£4,500** and upwards no deduction on account of differentiation be made.

[From this section of the Report Commissioner Jolly expresses dissent. **See page 134A.**]

SECTION XI.

GRADUATION.

321. Graduation as applied to Income Tax is the name given to the principle of levying higher rates of tax upon larger incomes than upon smaller incomes. Differentiation classes incomes according to their nature or origin. Graduation grades and taxes them in accordance with their volume.

322. Any system of income taxation other than one which imposes a flat unvarying rate on all incomes of whatever size embodies a form of graduation, which may consist of the levying of higher rates on larger incomes, or the superimposing of a super tax (itself flat or graduated) on larger incomes or the allowing of exemptions or abatements either continuous or vanishing, on all or any incomes.

323. The term graduation has come to be more strictly applied to that form which expresses itself in rates of tax which increase with the increase of taxable income, and in that specialized sense it is used in this section of our Report.

324. **Practice in Australia.**—Graduation on differing scales is found in the Income Tax Acts of all the States, in respect of both incomes from personal exertion and incomes from property. Confining reference to the rates applied to individual incomes from personal exertion they may be briefly summarized :—

Commonwealth.

The rates of tax on the HIGHEST £ run from 3·00375 pence on the first taxable £, and rise regularly with each £ to 60 pence on the 7,600th £. On each succeeding £ the rate is uniformly 60 pence.

To this have been added super taxes aggregating 70·625 per cent., making the rates on the highest £ range from 5·1251 pence to 102·375 pence.

The AVERAGE rates of tax applicable to each £1 of taxable income run from 3·00375 pence on an income of £1, and rise regularly with each £ to an average rate of 31·5 pence on an income of £7,600. On each succeeding £ of income the rate of tax is uniformly 60 pence. This has the effect of raising the average rate continuously but less rapidly than before.

To this have been added super taxes aggregating 70·625 per cent., making the rates range from 5·1251 pence on an income of £1 to 53·746875 pence on an income of £7,600. On each succeeding £ the rate of tax is uniformly 102·375 pence, which has a similar influence in raising the average.

New South Wales.

The rates run from 9 pence on the first taxable £ by six steps to 24 pence on the 9,700th and each higher £; with the addition thereto of a super tax of 6 pence on each £, thus making the joint tax to range from 15 pence to 30 pence.

Victoria.

The rates run from 3 pence on the first taxable £ by four steps to 7 pence on the 1,500th and each succeeding £.

Queensland.

The rates of tax on the HIGHEST £ run from 6·006 pence on the first taxable £ and rise regularly with each £ to 54 pence on the 4,000th £. On each succeeding £ the rate is uniformly 36 pence.

To this has been added a super tax of 20 per cent. on income exceeding £200, making the rates on the highest £ range from 6·006 pence to 64·8 pence at £4,000. On each succeeding £ the rate is uniformly 43·2 pence.

NOTE.—There is thus a sharp regression in rate of tax at £4,000, on the highest £ of which the rate is 54 pence, while on each succeeding £ the rate is 36 pence. The rate of tax on each £ of income in excess of £4,000 is under the original scale less than the rate on the 4,000th £, by from ·012 pence (on the rate reached in an income of £2,501) to 18 pence (on the rate reached in an income of £4,000), and under the super tax scale is less by from ·0144 pence to 21·6 pence on the same incomes.

The AVERAGE rates of tax applicable to each £ of taxable income run from 6·006 pence on an income of £1, and rise regularly with each £ to an average rate of 30 pence on an income of £4,000. On each succeeding £ the rate of tax is uniformly 36 pence. To this has been added a super tax of 20 per cent. on incomes exceeding £200, making the average rates range from 6·006 pence on an income of £1 to 36 pence on an income of £4,000. On each succeeding £ the rate of tax is uniformly 43·2 pence.

South Australia.

The rates run from 5 pence on the first taxable £ by five steps to 22 pence on the 10,000th and each *succeeding* £; *with the addition thereto of a super tax of 25 per cent.*, making the rates to range from 6·25 pence to 27·5 pence.

Western Australia.

The rates of tax on the HIGHEST £ are 2 pence on each of the first 100 £s, and from that point rise regularly with each £ to 94 pence on the 7,766th £. On each succeeding £ the rate is uniformly 48 pence. To this has been added a super tax of 15 per cent. operating from a variable point in the vicinity of £264, thus making the rates on the highest £ range from 2 pence to 108·1 pence at £7,766. On each succeeding £ the rate is uniformly 55·2 pence.

NOTE.—There is thus a sharp regression in rate of tax at £7,766 on the highest £, of which the rate is 94 pence, while on each succeeding £ the rate is 48 pence. The rate of tax on each £ in excess of £7,766 is, under the original scale, less than the rate on the 7,766th £ by from ·008 pence (on the rate reached in an income of £3,934) to 46 pence (on the rate reached in an income of £7,766), and under the super tax scale is less by from ·0092 pence to 52·9 pence on the same incomes.

The AVERAGE rates of tax applicable to each £ of taxable income are 2 pence on all incomes up to £100, and from that point rise regularly with each £ to an average rate of 48 pence on an income of £7,766. On each succeeding £ the rate of tax is uniformly 48 pence. To this has been added a super tax of 15 per cent. operating from a variable point in the vicinity of £264, making the average rates range from 2·3 pence on an income of £1 to 55·2 pence on an income of £7,766. On each succeeding £ the rate of tax is uniformly 55·2 pence.

Tasmania.

The rates run from 3 pence on the first taxable £ by nine steps to 15 pence on the 2,001st and each succeeding £; to which is added a super tax of 10 per cent. on all incomes of £200 and over, thus making the rates to range from 3 pence to 16·5 pence.

325. **Practice in New Zealand**—

The rates of tax on the HIGHEST £ are 12 pence on the first £400, and from that point rise regularly with each £ to 124 pence on the 6,000th £, whence they rise by less rapid ascent to 164 pence on the 10,000th £. On each succeeding £ the rate is uniformly 88 pence. To this has been added a super tax of 20 per cent., making the rates on the highest £ range from 14·4 pence to 148·8 pence and upward to 196·8 pence. On each £ exceeding £10,000 the rate is uniformly 105·6 pence.

NOTE.—There is thus a sharp regression in rate of tax at £10,000 on the highest £, of which the rate is 164 pence, while on each succeeding £ the rate is 88 pence. The rate of tax on each £ in excess of £10,000 is under the original scale less than the rate on the 10,000th £ by from ·01 pence (on the rate reached on an income of £4,201) to 76 pence (on the rate reached on an income of £10,000), and under the super tax scale is less by from ·012 pence to 91·2 pence on the same incomes.

The AVERAGE rates of tax applicable to each £ of taxable income are 12 pence on all incomes up to £400, and from that point rise regularly with each £ to an average rate of 68 pence on an income of £6,000, thence by a less rapid rise to an average rate of 88 pence on £10,000. On each succeeding £ the rate is uniformly 88 pence. To this has been added a super tax of 20 per cent., making the average rates applicable to each £ of taxable income up to £400 to be 14·4 pence, from which point it rises to 81·6 pence on an income of £6,000, and thence by less rapid rise to 105·6 pence on an income of £10,000. On each £ exceeding £10,000 the rate is uniformly.

326. **Practice in Great Britain.**—The rates run from 36 pence on the first taxable £ by four steps to 72 pence on the 2,001st £, reducible in the case of incomes from personal exertion by 9 pence, making the rates range from 27 pence to 63 pence. On each succeeding £ the rate is uniformly 72 pence. To this is added a super tax on so much of the income as exceeds £2,000, rising by nine steps to 72 pence on the 30,001st £. On each succeeding £ the rate is uniformly 72 pence, making the joint rates to range from 36 pence to 144 pence.

Several of these Acts contain minor provisions—such as concessions to returned soldiers or to married men with families receiving less than a certain income, rebates in respect of dividend tax paid on any dividends included in the taxpayer's income, &c.—but as they are of restricted application and for the most part relate to exemptions rather than to graduation, they have been omitted from the above summary.

327. A graph (Appendix No. 7) has been prepared, designed to afford a general comparison of the foregoing scales of rates extending up to a taxable income of £8,000.

328. **Importance of the study of rate on highest £.**—One noticeable feature appears in three of these systems and calls for special comment.

In the regularly graduated scales of Queensland, Western Australia, and New Zealand, the lines of the rates of tax after reaching a certain elevation become flat and are suddenly disjointed and dropped to rates which are very much lower than (approximately half) the height reached by the rates on the £s which immediately precede them. Thus under the scales at present *current*—

	Original Scale.	Including Super Tax.
In Queensland the 4,000th £ is required to pay a tax of	54 pence ..	64·8
while the 4,001st and succeeding £s are required to pay only	36 „ ..	43·2
In Western Australia the 7,766th £ is required to pay a tax of ..	94 „ ..	108·1
while the 7,767th and succeeding £s are required to pay only	48 „ ..	55·2
In New Zealand the 10,000th £ is required to pay a tax of	164 „ ..	196·8
while the 10,001st and succeeding £s are required to pay only	88 „ ..	105·6

thus showing drops which are in each case a reversal of the principle applied throughout the whole range of the graduated scale—for progression in the rates of tax there is substituted (probably unintentionally) regression which is usually regarded as an unjust mode of taxation.

This procedure is not present in the fourth regularly graduated scheme—that of the Commonwealth—where while the rates run from 5·11875 pence on an income of £1 and rise to an average of 53·7469 pence on an income of £7,600, the rate of tax on the 7,601st £ is 102·375 pence, which is the rate carried by the highest individual £ of the ascending scale. This preserves the principle of progression. There is not here the discrimination in favour of higher incomes which is so marked in the first three cases.

329. Attention has been directed to these inconsistent rates for the purpose of emphasizing that in the consideration of a graduated taxing scheme the important subject for study is the rate of tax carried by each individual £ of the income, for, whatever be the amount of the taxable income, each individual £ in one income should carry precisely the same rate of tax as the corresponding £ in every other income; for instance, the tenth £ should always bear identically the same tax in every taxable income however large, and so with every other £. That these progressive rates may be thrown together at any stage and for purposes of easy handling be averaged may assist administration, but though usefully introduced at a later stage in the study of the subject it confuses and obscures the true position and may lead to serious misconception as to the precise operation of the scale.

329A. **Evidence of Witnesses.**—Almost every witness who addressed himself to this subject pleaded for the introduction of a simple method whereby the taxpayer, inexpert in calculations, could easily ascertain the rate and reckon up his liability without engaging professional assistance. The scales of the present Federal Act running into long decimals, and more particularly the geometrical curves of the property rates, were strongly condemned because of their complexity, which was represented as aggravated by the method in which the tax on composite incomes, consisting partly of income from personal exertion and partly of income from property, is computed.

> "It is quite impossible for the average taxpayer in the first place to estimate what his tax is likely to be or to check the assessment as to its accuracy when it eventually comes to hand."
>
> "I have heard many taxpayers express the view that, even if it meant paying a little more in the way of taxation, they would prefer to do this, as long as they knew that what they were paying was the correct amount."

These quotations express the views of a large number of witnesses, some of whom also urged that one rate, simple in application, be used for all individual incomes from whatever source derived.

330. The "step" system, as used in New South Wales, Victoria, and South Australia, was advocated by a number of witnesses, chiefly from these States. The system has from long use become familiar, and the tax can be calculated by simple arithmetic, without the use of decimals. Some witnesses, including officials, suggested modified systems which merely convert the smooth ramps of the present Commonwealth Acts into a number of wider or narrower steps whereby one uniform rate may be charged on each section or step of income.

331. The "step system," moving more or less irregularly, does not, however, commend itself to us, a more equitable method being provided in the regularly graduated scale recommended in this section, which is capable of delicate adjustment, and determines a rate easily understood, easily remembered, and easily calculated.

332. Among the schemes submitted to us was one in which the witness suggested a scale akin in principle to, but very different in effect from, that recommended by your Commissioners. He proposed that income from personal exertion and income from property be reduced to one denominator, and then continued: "Tax to be assessed at a commencing rate on the first £ of 5 1/100d. in £ and to rise by 1/100d. in £ for every additional £ of taxable income up to £10,000 where the rate reaches 8s. 9d. in £. Everything over £10,000 might be assessed at 8s. 9d., or at some other higher figure having regard to the interests of the revenue."

In illustration he furnished a table, reading

Income.	Rate in Pence.	Income.	Rate in Pence.	Income.	Rate in Pence.
£		£		£	
1	5·01	4,000	45	10,000	105
100	6	5,000	55	15,000	105
500	10	6,000	65	20,000	105
1,000	15	7,000	75	30,000	105
2,000	25	8,000	85	50,000	105
3,000	35	9,000	95		

Seeing the high altitudes to which the proposal would raise the tax, he wrote:—"The advantages of this basis over the present method are too obvious and numerous to elaborate. The slightly higher graduation may possibly be deemed a detriment, but almost every witness has expressed a willingness to pay a little more if only he could check the calculation, and when it is possible to meet the wish of the public without decreasing revenue, I suggest that every effort should be made to do so."

The highest rate of tax under this scheme reaches not 105, but 205 pence, so that a person having an income of **£10,000** would, in respect of the final £, be allowed to retain only 35 pence, and, in respect of every individual £ in the preceding **£4,500,** would be paying not less than **10s.**

333. In the case of taxpayers who derive their incomes in Western Australia, the total taxes payable in any one year on the highest £ of their incomes as under would be:—

Income	£5,000	£6,000	£6,940	£7,000	£7,766	£9,000	£10,000
	Pence.	Pence.	Pence.	Pence.	Pence.	Pence.	Pence.
Proposed Rate	105	125	144	145	160	185	205
Western Australia Rate ..	70	84	96	98	108	55	55
Total Rate	175	209	240	243	268	240	260

334. **The Adoption of a Single Scale of Rates.**—In the section of the Report dealing with differentiation (par. 320) the Commission has recommended that income from personal exertion and income the produce of property should be reduced to one common denominator, and that all individual incomes should be assessed and taxed at one scale of rates instead of two scales as at present.

335. In selecting which of the two kinds of scales—one a straight line and the other a composite line partly of the first degree, partly of the second, and partly of the third—we have no hesitation in choosing the former for these reasons:—

1. It approaches more nearly to the general contour of the line which expresses the widely accepted theory of the diminishing utility of money or wealth as a whole to its possessor; that is, as his stock of money increases, the marginal utility of the last addition to his stock continuously falls, and, until exceedingly high levels are reached, each additional portion of income is of less utility to him than its precedessor. In its relation to taxability the tax being on a suitable graph represented by the area below the line, such a line viewed from the upper

side would be a hollow curve ascending from its commencement at the rate chargeable on the first £1 of income and not only ascending but also increasing in rapidity of ascent with each unit of increase in income. However closely such a curve may approach to ideal accuracy in the expression of that theory we are unable to recommend its adoption because—(*a*) it would be as difficult of comprehension by the general taxpayer as are the present property curves under the Commonwealth Act; and (*b*) the rates determined by the line would not produce the revenue which should be yielded by middle class incomes. We are equally unable to recommend a line which like the scale of the present Federal property rates curves in the opposite direction and causes disproportionately heavy burdens to fall upon lower incomes to the inequitable relief of others.

2. A straight line is the simplest. Its position and direction are the most easily understood. It is not less adaptable than any other form of graduation to the variable requirements of the public revenue and other economic and political considerations which may change from year to year.

336. Being unanimous in the opinion that the rates of tax should follow the course of a curve of the first degree—a straight line—the questions of its position and direction next call for consideration. If on the first graph (in Appendix No. 7) an attempt be made to draw a straight line showing as nearly as possible in respect of each State the mean of the irregular path traversed by the income tax rates of the State, no two of these lines would be found to agree in position and direction, and we have found it impossible to derive from them any definite and indisputable guidance to the discovery of an authoritative and scientifically correct line of graduation. The determination of the points where taxation shall begin and shall cease is the business of the statesman fully informed as to the requirements of the National purse, and the ability of various classes of income recipients to contribute without impairment of the sources of taxation.

337. **Position and Direction of Normal Line of Rates.**—Your Commissioners are of opinion that the personal exertion scale adopted in the Federal Income Tax Act of 1915, and its subsequent adjustments, are reasonably adapted to the economic, industrial, and business conditions obtaining in the Commonwealth, and that its movement represents in the main with fair accuracy the equitable relative taxable capacity of different sections of taxpayers. We are therefore led to recommend for adoption for our standard or normal line of rates one commencing at 5d. (being the point where the present rate commences) and traversing a straight course.

338. In seeking to determine the direction the line should take regard must be had to simplicity, easy comprehension by the average taxpayer, and ready ascertainment by him of the rate applicable to any stated income, as well as the more prominent questions of productiveness and equitable incidence. The smooth progression of the present personal exertion rate is the simplest which could have been used to effect a continuous rise of 57 pence in a series of 7,600 units. It was effected by tracing a straight line which, starting at the point representing 3 pence on the scale of rates rising perpendicularly from zero on the scale of incomes, cuts at 60 pence the line perpendicular to the point on the same scale, representing an income of £7,600. This line being produced backwards cuts the basic (income) scale at a point 400 units to the left or minus side of the zero line. A glance at the second graph (Appendix No. 8) illustrates this. But the system required that, in addition to ascertaining (as this line does) the rate of tax payable on the topmost £ of each income, large or small, there should be quickly ascertained the average rate payable in respect of any income. This line of average rates is found by shifting the pivot from 400 to 800 units to the left of zero and passing this line also through 3 pence on the scale of rates at the zero line—it cuts the 7,600th £ at 31·5 pence, which is the average rate of the tax payable on each £ of an income of £7,600, whose first £ carries a tax of 3·00375 pence and the 7,600th £ 60 pence.

339. Convenient, more easily understood, and equally adaptable lines could have been found in close proximity to these. The lines of progression under the scale operative to-day intersect at 5·11875 pence the scale of rates rising perpendicularly at zero £ and are as follows:—

Pivotal Point.	—	On Incomes of—	
		£1.	£7,600.
400	Rate of tax on highest £ is	5·1251 pence	102·375 pence
800	Average rate of tax is	5·06255 pence	53·7469 pence

We recommend that for these there be substituted lines radiating on pivots respectively 500 and 1,000 units to the left of the zero £ and passing through 5 pence at zero £. Their tracks will be :—

Pivotal Point.		On Incomes of— £1.	On Incomes of— £7,600.
500	Rate of tax on highest £ is	5·01 pence	81 pence
1,000	Average rate of tax is	5·005 pence	43 pence

These lines are plotted on the graph (Appendix No. 8).

The effect of pivoting at 1,000 on the scale of income "the line passing through 5 pence on the scale of rates" is to introduce a more convenient incline, and greatly simplify calculations. The rate of tax now rises regularly by ½d. in each £100. If the rate on £250 is 6¼d., the rate on £350 is 6¾d., on £450 7¼d., and on £600 8d.

340. When the rates originally determined were found insufficient for revenue requirements the lines were made to revolve on their pivots through an area representing an increase of 25 per cent. on the previous rates, and a new series of rates, exactly proportionate with the first, was determined to secure the necessary volume of revenue. Later on the lines were again moved to yield an additional 30 per cent. and 5 per cent. The latest movement is sufficiently indicated in the lines on the graph (Appendix No. 8) and they all follow in effect the practice established by law in certain Continental countries where the normal tariff (embodying the whole scale of rates) is fixed once and for all in the Income Tax Law, and is either not varied by the annual Budget Law or is varied only by levying a percentage over or under the tariff rates. In such cases the same percentage is added to (or deducted from) all assessments, so that the ratio of progression established by the original tariff remains unaltered. The tariff—the graduated scale of rates—is thus regarded as a standard basis of progression, and the annual tax is levied at such a percentage over or under the tariff as may be required (*vide* Graduated Income Taxes in Foreign States, House of Commons Cd. Paper 7100).

341. So just as the original normal rates of 1915 Assessment Act when found to yield insufficient revenue were raised by a percentage, the normal rates recommended by your Commissioners can be adjusted in a similar way—and as is shown below, in other ways—to meet the needs and policy of the Legislature.

342. **Simplicity.**—An urgent public demand has arisen for simplicity in the matter of rates, and these new lines respond to that demand, and with other simple features which are explained in pars. 343–345 form an easily comprehended, adaptable, and efficient scheme.

343. Simplicity is claimed for it, in that by the simple rules of elementary arithmetic, a taxpayer can easily ascertain for himself the rate and the tax chargeable upon his income immediately his return has been compiled. Under the line recommended by us the rule for ascertaining the average rate of tax and the total tax payable on any income up to the point where the line of progression in rates is replaced by another rate (under the present Act, £7,600) would be—

(1) Divide the taxable income by **200**: and (2) To the quotient add 5 (that is, the basic rate).

The result will be the *average rate* of tax in pence, thus :—

Taxable income (A)	£100	£164	£500	£2,000	£3,500	£7,600
Divide by 200 (B)	·5	·82	2·5	10	17·5	38
Adding 5 gives the average rate of tax per pound in pence (C)	5·5	5·82	7·5	15	22·5	43
A × C = the tax (D)	£2 5 10	£3 19 5	£15 12 6	£125	£328 2 6	£1,361 13 4

344. If collection at the rates of the normal scale be insufficient for the revenue requirements they can be raised by any percentage necessary, as was the case with the scale of the 1915 Act—say, as in that case, 25 per cent. The taxpayer has no difficulty in ascertaining the tax payable by him at the higher rate. He adds :—

	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
25 per cent (E)	0 11 5	0 19 10	3 18 1	31 5 0	82 0 7	340 8 4
and finds the tax (F)	2 17 4	4 19 3	19 10 7	156 5 0	410 3 1	1,702 1 8

345. The rule for ascertaining the rate of **tax payable on the highest £** of any income (up to **£7,600,** as before, or as far as the scale continues an uninterrupted ascent) is :—

1. Divide the taxable income by 100; and 2. To the quotient add 5.

The result is the **rate of tax payable on the highest £** of the income, thus :—

Taxable income (T) ..	£100	£164	£500	£2,000	£3,500	£7,600
Divide by 100 (U) ..	1	1·64	5	20	35	76
Adding 5—gives the rate of tax in the topmost £ in pence (V)	6	6·64	10	25	40	81

If the rates be increased by say 25 per cent. he adds—

25 per cent. .. and finds the tax on the highest £ to be	1·5 / 7·5	1·66 / 8·30	2·5 / 12·5	6·25 / 31·25	10 / 50	20·25 / 101·25

The increase in rate of tax on the highest £ is **1d.** in every **£100**; thus the rate on the highest £ in—

£100 is	1 + 5 = 6	pence.	
150 is	1½ + 5 = 6½	,,	
175 is	1¾ + 5 = 6¾	,,	
350 is	3½ + 5 = 8½	,,	
1,525 is	15¼ + 5 = 20¼	,,	
£2,750 is	27½ + 5 = 32½	pence.	
3,500 is	35 + 5 = 40	,,	
4,800 is	48 + 5 = 53	,,	
6,250 is	62½ + 5 = 67½	,,	
7,600 is	76 + 5 = 81	,,	

346. **Adaptability.**—The weight and incidence of the scale of rates can be varied by three distinct methods, and, as these may operate jointly or severally, there may be numerous combinations.

1. The tax may be varied by a percentage increase or decrease all along the line.

2. The uniform basic rate (3 pence in the £ in the scale of the original Federal Act, increased since by amendments to the Act to 5·11875 pence, and in our recommended scale 5 pence in the £) which applies without variation to every £ of taxable income may be raised or lowered.

3. The point at which the line of graduation shall cease and another rate be substituted may be pushed upward or drawn downward.

347. 1. The first method has been in operation for several years in connexion with the present Act. In 1916 the original tax was raised in this way by 25 per cent.; in 1918 it was raised to 62·5 per cent.; in 1920 it was raised to 70·625 per cent. The lines pivoted at points 400 and 800 units respectively were revolved from 60 and 31½ pence respectively till they eventually reached 102·375 and 53·746875 pence, with proportionate increases in intermediate rates, including the basic rate of tax which at the several successive periods has been 3 pence, 3·75 pence, 4·875 pence, and is now 5·11875 pence in each £. (See footnote).

2. The Second Method.—As the foundation of this scale of rates, there was in the scheme and formula of the original Act a uniform tax of 3 pence on each and every £ of income, irrespective of whether it was small or large. It is expressed by the integer 3 in the formula :—

$$\text{Rate} = 3 + \frac{\text{Income} \times 3}{400}$$

and may be called the basic rate of tax.

348. Without in any way interfering with or destroying the simplicity of the movement of the revolving lines, this basic rate can be separately and independently operated upon to increase or decrease the rate of tax or alter its incidence as between smaller and larger incomes.

349. If, for example, it be decided that 5d. is too high a rate to charge on the first £ of a small income, and that it should be reduced to 4d., the alteration may be effected in two ways : (*a*) by revolving the normal line down, so that instead of passing through 5, it shall pass through 4 at the zero £. This will involve a reduction of the rate of tax **all along the line** by 20 per cent.

Note.—The corresponding basic rates of tax of the Acts whose rates are epitomized in paragraph 324 of this Report are :—

	Original.	*With Super Tax.*		*Original.*	*With Super Tax.*
Commonwealth ..	3 pence	5·11875 pence	Western Australia	2 pence	2·3 pence
New South Wales ..	9 ,,	15	Tasmania	3 ,,	3·3 ,,
Victoria	3 ,,	3 ,,	New Zealand	12 ,,	14·4 ,,
Queensland	6 ,,	7·2 ,,	Great Britain (Normally) ..	36 ,,	36 ,,
South Australia ..	5 ,,	6·5 ,,			

TAMIL NADU ARCHIVES LIBRARY No. 6339

but (*b*) the same object as regards the first £ can be effected by reducing the basic rate from 5 pence to 4 pence on the zero £, which will have the effect of reducing the rate of tax **on all incomes** by one penny in the £. The effects may be contrasted thus :—

	£1	£100	£1,000	£4,000	£6,000	£7,600
Income	5·005	5·5	10	25	35	43
Average rate in pence on scale proposed	1·001	1·1	2	5	7	8·6
(*a*) Deducting 20 per cent.	4·001	4·4	8	20	28	34·4
Reduces effective rates to	4·005	4·5	9	24	34	42
(*b*) If 1d. be deducted the effective rates are						

Method (*a*) lifts all along the line amounts which are not identical on any two rates, but as the amounts increase proportionately with the increases of rate of tax, the ratio of the lifted amount to the rate previously chargeable is identical throughout. The ratio, but not the amount, is uniform.

Method (*b*) lifts all along the line an identical amount whatever be the rate of tax, but the ratio of the lifted amount to the rate previously chargeable diminishes proportionately with the increase of the rate of tax. The amount, but not the ratio, is uniform.

350. On the other hand, if it be decided to raise the rate on the initial £ to 6 pence, the alteration may be effected by (*a*) revolving the normal line, so that instead of passing through 5 pence, it shall pass through 6 pence at the zero £. This will involve an increase of 20 per cent. in the tax **all along the line.** But (*b*) the same object as regards the first £ can be effected by increasing the basic rate from 5 pence to 6 pence, which will have the effect of increasing the rate of tax **on all incomes** by one penny in the £. The effects are contrasted thus :—

	£1	£100	£1,000	£4,000	£6,000	£7,600
Income	5·005	5·5	10	25	35	43
Average rate in pence on scale proposed	1·001	1·1	2	5	7	8·6
(*a*) add 20 per cent.	6·006	6·6	12	30	42	51·6
Raises the effective rates to	6·003	6·5	11	26	36	44
(*b*) if 1d. be added the effective rates are						

These illustrations show that the altering of the uniform basic rate may have the effect of relieving the lower or relieving the higher incomes at a rate disproportionate with the influence of the change at the other end, and thus modify or accentuate the degree of graduation throughout the whole field of taxation. In extreme cases smaller incomes might by this method be driven out of the field of taxation altogether, or the rates upon them might be multiplied, while the influence on the larger incomes, though identical in weight, would be relatively light in effect.

351. The Third Method.—It is generally admitted that under a graduated scale the rate of tax on larger incomes should not be so heavy as to imperil the incentive to continued effort, and it becomes a practical question to decide at what point in the ascending scale the rising rates should be superseded by a scale of slower ascent or by a flat rate. Under the scale of rates on incomes from personal exertion at present in force under the Commonwealth Act the point chosen is when the income reaches £7,600. But circumstances may arise which might compel a lowering or necessitate a raising of the point, and in this movement is found the third method of adjustment, namely, the extending, shortening, or deflecting of the normal line, and its supersession at that point by another rate or line of rates. These three methods may be used singly or in any combination, and afford without any change in the normal or standard scale a very flexible system, by which expression can be given to very varied conditions and requirements. They may be combined thus :—

(1) Percentage increased	basic rate raised	line extended line unchanged line shortened	When for any year the length of the line has been determined, it may for higher incomes be continued by a line of rates which may be itself more or less sharply progressive, regressive, or flat
	basic rate unchanged	line extended line unchanged line shortened	
	basic rate lowered	line extended line unchanged line shortened	

making together 9 combinations.

(2) Percentage unchanged and 9 corresponding combinations.

(3) Precentage reduced and 9 ,, ,,

making in all 27 combinations

Act—sa
payable

25 per cent (E)
and finds the tax

Suitability of Recommended Method.—The flexibility of the system makes it unnecessary, encies of arithmetic make it impossible, to devise a simple scale of rates which will lification exactly suffice to bring in the revenue required at the present time, and the

lines of graduation recommended by your Commissioners are not submitted as an unalterable standard adequate without modification for present needs, but as constituting an easily comprehended, readily adaptable and efficient scheme capable of being adjusted as above indicated with any degree of accuracy desired to the requirements of the revenue, and the economic, industrial, and business conditions of the country from time to time. The following is a :—

353. **Comparison of the rates (plus 25 per cent.) proposed by your Commissioners with the rates current under the present Commonwealth personal exertion scale :—**

A. The rates of tax chargeable on the **highest** £ of some representative incomes from personal exertion up to £10,000 as per the scale of—

(1) The original Federal Act of 1915 ;
(2) The Federal Act at present in force ; and
(3) The rates recommended by this Commission, increased by 25 per cent., and

B. The **average rates** of tax chargeable on the same incomes as per the scale of—

(4) The original Federal Act of 1915 ;
(5) The Federal Act at present in force ; and
(6) The rates recommended by this Commission, increased by 25 per cent.

The rates in Columns 1 and 2 are shown as rising till an income of £7,600 is reached when they become flat at 60 pence and 102·375 pence respectively. The impulse of earlier increases continues, however, to express itself in the average rates on still higher incomes, as shown in Columns 4 and 5. For purposes of this comparative table, the rates in Column 3 are treated as rising till an income of £10,000 is reached. This does not imply any opinion on the part of your Commissioners that the commencement of the flattened rates should be at that or at any other figure.

Rates on Highest £.			Income.	Average Rate on each £.		
Top Rates of the Original Scale. (1.)	Top Rates of the 1920–21 Scale. (2.)	Top Rates of Recommended Scale plus 25 per cent. (3.)		Average Rates of Original Scale. (4.)	Average Rates of 1920–21 Scale. (5.)	Average Rates of Recommended Scale plus 25 per cent. (6)
Pence.	Pence.	Pence.	£	Pence.	Pence.	Pence.
3·75	6·3984	7·5	100	3·375	5·7586	6·875
4·5	7·6781	8·75	200	3·75	6·3984	7·5
5·25	8·9578	10	300	4·125	7·0383	8·125
6	10·2375	11·25	400	4·5	7·6781	8·75
6·75	11·5172	12·5	500	4·875	8·3180	9·375
7·6250.. ..	13·0102	15·625	750	5·8125	9·9176	10·9375
10·5	17·9156	18·75	1,000	6·75	11·5172	12·5
14·25	24·3141	25	1,500	8·625	14·7164	15·625
18	30·7125	31·25	2,000	10·5	17·9156	18·75
21·75	37·1109	37·5	2,500	12·375	21·1148	21·875
25·5	43·5094	43·75	3,000	14·25	24·3141	25
33	56·3062	56·5	4,000	18	30·7125	31·25
40·5	69·1031	68·75	5,000	21·75	37·1109	37·5
47·25	80·6203	80	5,900	25·125	42·8695	43·125
48	81·9000	81·25	6,000	25·5	43·5094	43·75
55·5	94·6969	93·75	7,000	29·25	49·9078	50
59·25	101·0953	100	7,500	31·125	53·107	52·125
60	102·375	101·25	7,600	31·5	53·7469	53·75
60	102·375	106·25	8,000	32·925	56·178	56·25
60	102·375	118·75	9,000	35·933	61·311	62·5
60	102·375	120	9,100	36·210	61·783	63·125
60	102·375	125	9,500	37·2	63·472	65·625
60	102·375	131·5	10,000	38·34	65·417	68·75

It will be seen that there is close agreement between Columns 2 and 3, and Columns 5 and 6.

354. **Easy Comprehension.**—Some space has been devoted to explaining the simplicity and adaptability of the method recommended by your Commissioners. We add a few illustrations showing it can be easily understood and applied by a taxpayer of limited skill in figuring. Hav

ascertained when his return is prepared the amount of his income he, if the method recommended by us be without modification in operation, will (1) divide the income by 200; (2) add five to the quotient; (3) multiply the income by the sum, which gives the actual tax payable thus :—

Income	(A)	£150	£225	£375	£412	£515	£670
Divide by 200	(B)	·75	1·125	1·875	2·06	2·575	3·35
Add 5, gives Rate ..	(C)	5·75	6·125	6·875	7·06	7·575	8·35
Tax = (A) × (C) = (D) ..		£3 11s. 10d.	£5 14s. 10d.	£10 14s. 10d.	£12 2s. 4d.	£16 5s. 1d.	£23 6s. 2d.

355. If unskilled in the use of decimals, he may, by using the common fractions of a penny, get results sufficiently accurate for his purpose. To repeat the above examples :—

Income	(A)	£150	£225	£375	£412	£515	£670
Divide by 200	(B)	$\frac{3}{4}$	$1\frac{1}{8}$	$1\frac{7}{8}$	$2\frac{1}{16}$	$2\frac{1}{2}$	$3\frac{3}{8}$
Add 5, gives Rate ..	(C)	$5\frac{3}{4}$	$6\frac{1}{8}$	$6\frac{7}{8}$	$7\frac{1}{16}$	$7\frac{1}{2}$	$8\frac{3}{8}$
Tax = (A) × (C) = (D) ..		£3 11s. 10d.	£5 14s. 10d.	£10 14s. 10d.	£12 3s. 5d.	£16 1s. 10d.	£23 7s. 7d.

356. If he be desirous of ascertaining the tax payable on the highest £ of his income the operation is simple. It is done by cutting off the last two figures, and adding 5 to the result, and multiplying as before, thus :—

Income	(E)	£150	£225	£375	£412	£515	£670
Divide by 100	(F)	1·5	2·25	3·75	4·12	5·15	6·70
Add 5, gives Rate, in pence ..	(G)	6·5	7·25	8·75	9·12	10·15	11·7
Income	(E)	£2,560	£3,128	£4,376	£5,186	£6,923	£7,600
Divide by 100	(F)	25·6	31·28	43·76	51·86	69·23	76
Add 5, gives Rate, in pence ..	(G)	30·6	36·28	48·76	56·86	74·23	81

356A. The illustrations in this section of the Report all relate to incomes, to which the method of averaging as recommended in paragraph 61 of our Report does **not** apply.

For incomes to which the method of averaging is applied, a similar rule obtains, namely, ascertain the average income which determines the taxable capacity and ascertain the rate of tax thereon as above. Multiply this rate by the income of the taxable year and the product is the tax payable.

357. **We recommend**—

1. That all incomes, whatever be their nature, having been by suitable differentiation expressed in one common denominator, there be one scale of rates applicable to all taxable incomes.
2. That a standard or normal scale of rates be adopted and be maintained for as long a time as possible unaltered, but subject to adjustment yearly by the methods indicated in this section of our Report; and
3. That such scale commences from a basic rate of 5 pence, and that from 5·005 pence on the first £ the average rate of tax on all incomes increase with every increase of income regularly by $\frac{5}{1000}$d. for each £; that is, increase regularly at a rate equivalent to ½d. in every **£100** up to such amount as may be determined from time to time.

[From this section of the Report Commissioners Missingham and Mills, and Commissioner Duffy express dissent. See pages 135 and 137.]

SECTION XII.

TAXATION OF INCOME OF AUSTRALIAN RESIDENTS DERIVED OUTSIDE AUSTRALIA.

358. **Official Evidence.**—The Federal Commissioner of Taxation, in the course of his evidence on the subject of Double Income Tax, expressed the opinion that :—

With the disappearance of the Double Income Tax there is no reason why Australia should limit its tax to incomes arising from sources in Australia.

(See also paragraphs 169 and 170 of this Commission's First Report). The Commissioner considered that, upon the elimination of Double Taxation in respect of incomes taxed both in the United Kingdom and the Commonwealth, Australian residents should be taxed on their total incomes wherever derived on the basis of their ability to pay. He said :—

It would mean that, instead of the Commonwealth losing Income Tax on large revenue derived by Australians —using the term in a general sense—from such countries as Japan, China, America and South America, we should get the tax on it. There is no reason, to my mind, why that revenue should not contribute towards the cost of government in Australia.

The Victorian Commissioner of Taxes stated :—

If the income is not earned in or derived from Victoria, it is not taxed, and I think the Victorian practice is correct in this respect. . . . My opinion is that Australia should not depart from its present Income Tax principle.

359. **Non-Official Evidence.**—Very few witnesses dealt with the general subject of the taxation of incomes of Australian residents derived abroad. In the majority of instances the references in evidence to the subject arose out of the discussion of the issues involved in the taxation of profits arising from sales abroad of exports from Australia. In one or two instances the scope of the Commonwealth Income Tax Assessment Act in its non-exclusion of all income derived outside Australia was defended by argument, but more frequently that feature of the Act seemed to be accepted by witnesses as a matter of course, or as not calling for special comment or defence. In one State a representative witness, in his evidence in chief on the subject of Double Taxation, said :—

The country of source of income should be the country to impose and collect the tax; but there are so many national and international considerations to be taken into account that the question is considered one of politics rather than of taxation.

360. A representative witness in another State said :—

I consider that any taxation in Australia of incomes derived abroad would be unjust, whether such incomes or part thereof are ultimately received in Australia or not. Income Tax legislation should be based upon the principle that each member of the community should be taxed by reference to :—

(*a*) The protection to property, education and other public advantages afforded to him by the Government of the country in which his income is derived; and

(*b*) The amount of his tax to be proportionate to the means and ability to pay derived by him from the country towards whose revenue he is required to contribute.

Taking these principles as the basis of Income Tax assessment it is obvious that any tax imposed here upon income earned abroad is not in the nature of a real Income Tax, inasmuch as this country affords no Police, Naval or Military protection to the property abroad from which the income is derived, and no advantages to the taxpayer, such as education, municipal and other utilities to assist him in the earning of the income. My clients also consider that such taxation would be detrimental to the country's welfare from the point of view of its deterrent effect upon income coming here for investment.

361. A third witness expressed the opinion that :—

It would be a fatal mistake to depart from the principle that Income Tax should be computed upon incomes earned in or derived from Australia. . . . Our attitude is just . . . . . I think that, as far as Great Britain is concerned, it has a reason for taxing income derived from outside the United Kingdom which we have not for profits earned outside the Commonwealth. There is no doubt that what was called invisible imports, *i.e.*, revenue derived from investments abroad, all over the world of British capital were—and I suppose still are—very large sources of wealth to Great Britain and income to the residents of Great Britain, and a very great deal of the British Naval and Military expenditure was incurred to protect these capital investments abroad.

In answer to the question :—

Supposing an Australian resident invests his money in a foreign country where there is no Income Tax, and the profits are brought to Australia, and these persons enjoy the protection of this community, do you say they should be relieved of Income Tax altogether ?

the witness replied :—

Those are comparatively rare exceptions. . . . Theoretically it does seem that they should be taxed to some extent, but I do not think you should make it a heavy tax, or you may drive them there altogether.

In answer to the question :—

Do you think it would be a reasonable thing to tax the income derived abroad, but allow a rebate of any tax paid to the foreign country in which the income is derived ?

the witness replied :—

Yes, that is a novel suggestion to me, but I think it is a very fair one in that case.

362. **Right of a State to tax Income arising outside its Borders.**—The sub-Committee appointed in 1919 by the British Royal Commission on the Income Tax to confer with representatives of the Dominions on the subject of Double Income Tax within the Empire, in the course of its Report, stated :—

> We discussed and admitted as general principles of taxation governing any conclusions at which we might arrive :
>
> (*a*) That a condition of effective taxation occurs when either (1) a source of income arises in any State or (2) the owner of an income resides in any State ;
>
> (*b*) That every State has an unrestricted right to adopt its own methods of taxation within the sphere of its jurisdiction. . . .

The contention, without qualification, that a primary right to tax income is possessed by the country whence the income is derived—to the exclusion of the right to tax it in the country of residence, violates the principle that each country has complete freedom to choose its own measure of liability in imposing taxation, and is difficult to justify on theoretical principles. If this contention were admitted, the United Kingdom would be called upon to surrender a right which it has exercised ever since the imposition of its Income Tax, a right which is common to the systems of many foreign countries and some Dominions, and is based on an admitted canon of taxation, that of ability to pay.

363. **Indorsement of British Practice.**—The Report of the British Royal Commission (while recommending specific reliefs in respect of Double Income Tax within the Empire, and suggesting minor amendments of the law as it relates to the taxation of incomes arising abroad, other than from trade) recommended that :—

> There should be no change in the present law, which renders British resident persons or Companies liable to be assessed on the whole of their trading profits, irrespective of what proportion of their profits arises abroad.

364. **Practice in British Dominions.**—There appears in Appendix No. 6 to this Report a statement which indicates in abbreviated form the scope in respect of the sphere of taxation of the various Income Tax Acts in force throughout the British Dominions. The summary discloses considerable variation in practice. The absence in the instances cited of a ruling principle in the determination of the sphere of taxation is conspicuous, but is not remarkable. There must be of necessity many and varied considerations to be taken into account in framing an Income Tax measure. What is deemed appropriate in one country may prove to be wholly inappropriate in another. Income Taxation may in some instances have been introduced as a temporary financial expedient, in the belief that it would be subsequently abandoned or substantially modified upon the passing away of the urgency of the moment. In such cases the supposed temporary character of the tax may account for the presence of some features which later on call for amendment. Revenue necessity and other considerations create practical difficulties in the enactment of theoretically sound taxation measures.

365. **Test of Proposed Taxation.**—Sir Josiah Stamp seems to recognise this when he says :—

> The State as a tax-gatherer has to ask and answer the following questions :—
>
> 1. Is the proposed tax economical, or will it cost an unwarrantable amount to get it in ?
> 2. Is it within the powers of the administration for assessment and collection, or is it too full of difficulties to be workable ? Allied thereto is the question :
> 3. Will it be specially open to evasion and provoke dishonesty ?
> 4. Will the imposition of the tax tend to dry up the source of the tax, and so prove abortive for the revenue ?
> 5. Does it raise political difficulties at home and provoke unrest ?
> 6. Does it raise international difficulties or provoke conflict with other taxing jurisdictions ?

366. **Bases of the Right to Tax.**—In his evidence before the British Royal Commission, Sir Josiah Stamp said :—

> The tax that a man is called upon to pay to the State may be said to be divisible into two parts, that which is due for the specific protection and maintenance of particular sources of income, and that which is due for the privileges which the citizen himself enjoys in his person and residence.

His evidence did not question the justice of the British practice of taxing the resident in respect of his income derived from abroad.

367. Professor Seligman in his "Essays in Taxation" expresses the view that the force of the oldest principle employed in taxation—that of citizenship and political allegiance—has been in modern times considerably weakened. He goes on to say :—

> We see then that each of the last three principles—temporary residence, domicile and location of property—has a certain, but not a complete justification. There is, however, one final principle, toward which all modern Governments are tending, which reconciles the three preceding tests. This is the principle of *economic interest or economic allegiance*, as against the antiquated doctrine of political allegiance. Every man may be taxed by competing authorities according to his economic interests under each authority. The ideal solution is that the individual's whole faculty should be taxed ; but that it should be taxed only once, and that it should be divided among the tax districts according to his relative interests in each.

368. Towards the conclusion of a masterly review of the problems of Double Taxation, the Professor admits :—

> It is evident that the question where a tax ought to be imposed involves a rather simple theoretical problem and many very difficult practical problems. It is the same with almost every question of taxation. As a matter of principle, it is easy to decide that a man should be taxed according to his faculty ; as a matter of practice, it is not so easy to apply the principle of faculty in the actual tax system.

369. **Necessary Considerations.**—The taxation or otherwise of the incomes of Australian residents derived outside Australia is a question which is not only of academic interest, but of practical importance. Viewing the proposal on its practical side, it has to be recognised that the productiveness of such an extension of the Act would probably be considerable, and that it is a form of taxation in force in many countries. It may also be recalled that it was advocated by the Federal Commissioner of Taxation solely on revenue grounds.

370. Preliminary to the more general discussion of the subject, it seems appropriate to refer to two matters. In the first place, there was an absence of any general demand on the part of witnesses who appeared before us for an extension of the scope of the present Commonwealth Act to embrace incomes derived from abroad of Australian residents. The weight of evidence or opinion is manifestly in favour of the present restriction to incomes derived from sources in Australia. In the second place, we are not in a position to judge whether any decrease of revenue from taxation which may result from the adoption of our recommendations, and from other causes, can be balanced by a corresponding reduction in the public expenditure. Hence we are unable, in the absence of the necessary data, to adequately weigh any claim in justification of the suggested impost that may be advanced on the score of revenue necessity.

371. **Arguments for the Proposal.**—(1) It is urged that the generally accepted principle of taxation, that of contribution in proportion to ability, in the application of which income is regarded as the index of ability, does not admit of the exclusion from the sphere of taxation of incomes derived from abroad.

(2) A further argument in favour of the proposal is based on the view that—

> "a tax is a compulsory contribution of the wealth of a person or body of persons for the service of the public powers,"

and upon the contention that the State imposing tax upon incomes from abroad extends some measure of effective protection to the sources whence those incomes are derived. It is represented that the Commonwealth in effect protects the interests and property of its citizens in other countries, even though admittedly whatever powers of protection it possesses and exercises are possessed and exercised in virtue of its status as an integral part of the British Empire.

(3) A third reason which is advanced in justification of the suggested extension of the scope of the Act is that the present exclusion from the taxable area of income derived from sources outside Australia tends to encourage the investment abroad of capital which might otherwise be employed in Australia with great advantage to the country. It is represented that there is at present strong inducement to transfer capital from Australia for the purpose of profitable investment to countries which either do not impose Income Tax or whose rates of Income Tax are lower than those current in Australia.

372. **Arguments against the Proposal.**—(1) The view is advanced by the advocates of the present system that the ability of the subjects of every State

> "to contribute towards the support of the Government"

has both logically and equitably sole relationship to—

> "the revenue which they respectively enjoy under the protection of the State."

The phrase in Adam Smith's first canon of taxation—

> "in proportion to the revenue which they respectively enjoy under the protection of the State"

is accepted as being sound in principle only when interpreted to mean that no legitimate right of taxation exists in respect of income arising outside or beyond the boundaries of the country of the origin of the income.

(2) It is further argued that, when income from abroad is received in the country of residence, any economic allegiance that may be said to arise from this circumstance implies no greater tax obligation upon the resident than that which is amply discharged by the payment of the indirect taxation involved in the expenditure of the income.

(3) Objection is raised to the suggested alteration of the Act on the ground that it would tend to check the flow of capital into Australia. Many important enterprises, it is urged, have been largely dependent for their development and success upon the amount of British

other outside capital invested in them. If, in respect of the export trade of these undertakings the profits earned outside Australia are in the future to be subject to taxation, they will necessarily, be aggregated with the profits earned within Australia in determining taxable income. It is stated that the increase in tax (which in many cases may be considerable) will have the effect of decreasing the margin of security and probable profit of such investments, and so render them less attractive.

(4) It is further argued that, if the Commonwealth Act be amended, as suggested, there is no reason why the States should not similarly extend the scope of their respective Taxation Acts. Such extension of the States Acts would, it is contended, involve additional complexity in taxation, and add to the difficulties of taxpayers.

CONCLUSIONS.

373. We do not regard the taxation of incomes of Australian residents derived outside Australia as inherently inequitable, but it cannot be said to have the complete theoretical justification possessed by the existing scheme. Ministerial statements on the subject in the British Parliament indicate a concurrence with that view, and suggest that abandonment of taxation of incomes derived from abroad would be favorably considered if revenue needs permitted. We do not consider the reciprocal arrangement entered into with the British Government in respect of Double Income Taxation—which the Federal Commissioner of Taxation estimated would involve an annual loss of revenue to the Commonwealth amounting to some **£45,000**—affords in itself a justification for the proposed extension of the scope of the Commonwealth Income Tax Assessment Act. We consider that, while the imposition of the suggested tax might indirectly mean some small measure of relief to those taxpayers who would not be subject to its operation, it would mean in many cases an additional burden to those already subject to heavy taxation at the hands of both Commonwealth and States.

374. We are impressed with the suggestion that great difficulty would arise if, the Commonwealth having amended the scheme of its Act to embrace all incomes derived outside Australia, the several States should extend the scope of their Acts and tax the incomes wherever derived. We consider that, apart from the question of revenue production, the practical disadvantages attaching to the proposed amendment of the Act on the whole outweigh the advantages. The only justification for the suggested extension of the Act, in our opinion, would be revenue necessity.

RECOMMENDATION.

375. (1) Our principal recommendation must be in a conditional form. If the financial requirements prove to be such that the raising of additional revenue through taxation is unavoidable, then, in preference to a general increase of Income Tax rates materially above their present level, or to the introduction of new forms of taxation, we recommend resort to the taxation of incomes derived abroad.

(2) In the event of Income Tax being extended to incomes of Australian residents wherever derived, we recommend :—

(*a*) That the amount of any tax paid in respect of the same income in the country where the income arises should be allowed as a deduction from the Australian tax.

(*b*) That reciprocal arrangements for the purpose of avoiding Double Taxation as far as possible be entered into with other countries.

(*c*) That within the Empire the terms of any reciprocal arrangement should be those of the arrangement between Great Britain and Australia, which received legislative sanction in the Income Tax Assessment Act No. 31 of 1921.

NOTE.

Should the scope of the Income Tax Assessment Act be extended to include the taxation of incomes wherever derived, the Recommendations under the Section of the Report dealing with the Taxation of Profits arising from Sales Abroad of Exports from Australia will become unnecessary.

[From this section of the Report Commissioner Jolly expresses dissent. See page 138.]

SECTION XIII.

TAXATION OF PROFITS ARISING FROM SALES ABROAD OF EXPORTS FROM AUSTRALIA.

376. **The Existing Law.**—Section 10 of the Commonwealth Income Tax Assessment Act provides for the levying of tax upon " the taxable income derived directly or indirectly by every taxpayer **from sources within Australia,"** and in section 3 " income from personal exertion " is defined as meaning " income derived from sources in Australia consisting of . . . . . the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person." Under the Commonwealth system, which imposes Income Tax only upon incomes derived from sources in Australia, it is necessary to resort to some statutory or administrative expedient in order to ascertain the portion of any income derived partly within and partly without Australia which is attributable to a source within Australia, and therefore taxable under the present law.

377. **Original F.O.B. Provision.**—The Commonwealth Act, as originally enacted in 1915, made specific provision with regard to taxation of the income from goods sold after export from Australia, the section reading as follows :—

(23.) When the carrying on of any business involves the exportation of live stock, produce, or other commodities or substances from Australia for sale beyond Australia, before any sale or contract of sale of them at a definite price has been made, the value of such live stock, produce, or other commodities or substances at the time of their export, **based upon the ruling Australian market value for home consumption of similar goods of similar quality** shall be the value for the purpose of ascertaining the total income of such business from the sale of such goods for the purposes of section fourteen of this Act.

The method prescribed by this section may, as to its essential principle, be described as the " free-on-board " (f.o.b.) method, though, as will be seen from the succeeding paragraphs, the rigid wording of the section hampered its application.

378. The Commissioner of Taxation stated in evidence that the wording of the Section led to difficulties in connexion with the export of goods for which no ruling Australian market value for home consumption existed, as no similar goods of similar quality were being sold for use in Australia. One instance was of railway sleepers of a size not used in Australia, which had been prepared for use in India. There was also a difficulty with regard to frozen meat, the contention of the exporters being that there was no market in Australia for the **particular quality of meat exported.** A number of other cases somewhat similar to those cited are said to have occurred, and in 1918 the section was repealed.

379. To meet a difficulty which arose in New South Wales under the New South Wales *Land and Income Tax Act* 1895 in connexion with exports, a Regulation was gazetted in 1899, under authority of a Declaratory Act passed in the previous year, which introduced the f.o.b. method. The Regulation embodies three rules, the second of which provides that—

where the product, commodity or substance has at the time of export a market value at the port of export, that market value shall be deemed to be the value of such product, commodity or substance when exported.

The third rule provides that, where the exported goods have at the time of export no market value at the port of export, the value shall be deemed to be the sale price, less all expenses incurred both inside and outside of New South Wales.

These rules and the section upon which they were based are not now in force. The present practice of the Department is not governed by any prescribed regulation.

380. **Repeal of Section 23, F.O.B. Provision.**—The Commonwealth Treasurer, in his second-reading speech on the Bill for amendment of the Income Tax Assessment Act, including the repeal of section 23, informed the House that the section had proved cumbersome in operation and detrimental to the Revenue. The Treasurer added—

The provisions of the Common Law, as laid down by the Privy Council, will guide the Department in future.

381. While the Amending Bill was before Parliament, the Commissioner of Taxation was waited on by representatives of the Melbourne Chamber of Commerce, who desired to ascertain the Departmental view of the scope of the proposed amendments, including the repeal of section 23. The report of the interview in the Monthly Journal of the Chamber contains the following :—

Mr. Ewing . . . . informed the Chambers' representatives that the proposed amendments did not extend the scope of the existing Income Taxation Law, as the Department interpreted it, although some of them were intended to validate certain Departmental actions. **In answer to questions, he made it clear that profits earned outside Australia and not now taxable would not be affected by the amendments.**

382. The Act repealing section 23 contained no substitutionary provision, and determination of the method to be followed was therefore left to the Commissioner, who, however, as to general principles, was guided by decisions of the Privy Council and of the High Court of Australia

383. **Rules Issued in Substitution of F.O.B. Provision.**—The first rule on the subject issued by the Commissioner was designed to apportion profit arising from the sale of goods abroad, so as to ascertain the portion attributable to Australia, and consequently taxable on the basis now in force as to **imports.** This rule was, however, very soon superseded by the following rules, which are still in force. These rules were issued by the Commissioner in March, 1919, in form of a circular, reading thus :—

In view of the special cases which have arisen, and after consultation with the Crown Law Authorities, I have been obliged to make important alterations in the rules determining the liability to **Income Tax** or **War-time Profits Tax** of profits arising from the sales made by Australian businesses outside Australia. Prior to the alterations, the rule for determining whether any of such profits arose directly or indirectly from a source within Australia required that two out of the following three events had happened in Australia

(*a*) the place where the contract of sale was made ;
(*b*) the place where delivery of the goods was given ;
(*c*) the place where payment for the goods was made.

For the reasons mentioned, it has become necessary to repeal that rule and to substitute the following rules :—

(1) Where goods are sold (otherwise than by an agent outside Australia) before export from Australia the whole profit arising from the sale is taxable in Australia.

(2) Where goods are sold outside Australia after export from Australia (*a*) under conditions which necessitate acceptance by the seller in Australia of an offer by the purchaser outside Australia (*i.e.*, when the purchaser communicates direct with the seller or the seller's outside agent sends along the offer for acceptance or rejection), the whole of the profits, if any, resulting from the sale should be taxed in Australia ; (*b*) under conditions in which a contract for the sale has been made outside Australia by an agent for the Australian seller, if the agent has found a buyer and arranged prices and terms with him, the profit is to be treated as having arisen partly inside and partly outside Australia.

In the case of (*b*), the profit is to be apportioned so as to ascertain the part attributable to Australian sources For this purpose, the total cost of getting the goods to the purchaser is to be ascertained. From this amount sea freight, marine insurance, and exchange are to be eliminated. The residue is to be divided into two parts, representing (1) the cost price at which the goods were (or would be if a c.i.f. and e. case) shipped f.o.b. in Australia ; and (2) the costs. incurred by the selling agent or the Branch house in selling the goods. The profit will be apportioned between (1) and (2), and that part applicable to (1) will be treated as profit arising from a source in Australia.

When the agent outside Australia merely completes a contract of sale with a purchaser who has been referred to him by the Australian business, with instructions to complete the contract, any resulting profit is to be taxed as profit arising in Australia. When an agent outside Australia makes a sale of his Australian principal's goods before the goods are exported from Australia, the profit, if any, should be treated as having arisen partly inside and partly outside Australia, and should be apportioned in the manner already set out. In those cases where the whole of the profit is taxable as income derived from a source in Australia, deduction is allowable in respect of the expenses, if any, outside Australia.

384. **The Kirk Case.**—The Privy Council case above referred to (par. 380) was that of the Commissioners of Taxation (N.S.W.) *v.* Kirk (1900 A.C., p. 588), which was an appeal from a decision of the Supreme Court of New South Wales. The head note to the report of the case reads—

Where income was in part derived from the extraction of ore from the soil of New South Wales Colony, and from the conversion in the latter Colony of the crude ore into a merchantable product—

Held, that this income was assessable under the New South Wales Land and Income Tax Assessment Act of 1895, s. 15, sub-secs (3), (4), notwithstanding that the finished products were sold exclusively outside the Colony. *In re* Tindal (1897), 18 N.S.W. L R 378, overruled.

Lord Davey, by whom the Judgment of the Judicial Committee was delivered, said—

It appears to their Lordships that there are four processes in the earning or production of this income—

(1) the extraction of the ore from the soil ;
(2) the conversion of the crude ore into a merchantable product, which is a manufacturing process ;
(3) the sale of the merchantable product ;
(4) the receipt of the moneys arising from the sale.

All these processes are necessary stages which terminate in money, and the income is the money resulting less the expense attendant on all the stages . . . . The fallacy of the Judgment of the Supreme Court in this and in Tindal's Case is in leaving out of sight the initial stages, and fastening their attention exclusively on the final stage in the production of the income.

In Meeks' Case, cited in the next paragraph, Mr. Justice Isaacs, in the course of some remarks not essential to the Judgment, but " added at the parties' desire," said—

Kirk's Case would not have been any warrant for saying that, without apportionment in some way, **the whole of the £63,000** (the sum at issue) was taxable as derived from a source in New South Wales.

385. **The Meeks' Case.**—In a later case, the Commissioner of Taxation (N.S.W.) *v.* Meeks (Public Officer of The Sulphide Corporation Ltd.), 19 C.L.R., 58 (1915), which was an appeal to the High Court of Australia from a decision of the Supreme Court of New South Wales, the head note is as follows :

A company incorporated in England, and having its registered office in London, conducted its Australian business at Melbourne, in Victoria, and its practical operations of mining and treating and smelting ore at Broken Hill and Cockle Creek, in New South Wales. By a contract made in London, the company agreed to sell to purchasers a large quantity of concentrates produced from Broken Hill slimes, delivery of which was to be made at Broken Hill in instalments extending over a period of years. Pursuant to the contract, the purchasers paid a sum of £63,000 in advance, but before any concentrates were delivered they made default in further payments which had become due. An agreement was then made in London by which the original contract was cancelled as from the date of the cancelling agreement, and the company were to be entitled to retain for their use all moneys which had been paid under the contract. No concentrates or slimes were ever appropriated, set apart, or treated by the company for the purchasers. Of the £63,000, the balance held by the company, after deduction of commission and brokerage, was £61,425.

Held, that for the purposes of the *Income Tax (Management) Act* 1912 (N.S.W.) and the *Income Tax Management (Amendment) Act* 1914 (N S W.), the £61,425 should be treated as profits from the business of mining and treating and smelting ore which was carried on by the company mainly, if not altogether, in New South Wales, and therefore that it should be brought into account in ascertaining the income of the company taxable under those Acts, subject, however, to the right of the company to show that portion of it was not attributable to the business which was carried on in New South Wales. Decision of the Supreme Court of New South Wales, *in re* Meeks, 15 S.R. (N.S.W.) 107, reversed (pp. 568–9).

386. In Kirk's Case no method of apportionment was suggested. In Meeks' Case, Mr. Justice Isaacs said (at p. 589), in the course of remarks referred to in paragraph 384 above, that one of two methods must be employed, *i.e.*, either a provision in the N.S.W. Act,* under which, where a taxpayer carries on business both in and outside of the State, the taxable income is a sum bearing the same proportion to the total profits of the business as the assets in the State bear to the total assets, or, if that provision is not applicable, **the actual income must be found by some practical distribution and means of ascertainment.**

387. **The Kauri Co.'s Case.**—Another case may be referred to—that of the Commissioner of Taxes *v.* The Kauri Timber Co. Ltd., a New Zealand case decided in 1904 by the New Zealand Court of Appeal (N.Z. L.R. XXIV., p. 18). In that case the defendant Company had its registered and head office in Melbourne. It carried on business in Victoria, New South Wales, New Zealand, and elsewhere. Its principal business in New Zealand was the export to Sydney of timbers cut from its kauri forests, which were afterwards manufactured into various articles, and then sold in the manufactured condition. In that case it was—

Held, that the company was not liable to Income Tax In New Zealand upon the whole of the profits made by it upon timber exported by it from New Zealand and sold elsewhere (whether or not after further cutting or manufacture outside of New Zealand), but was liable only upon that part of the profit which was derived by it from the business carried on by it in New Zealand ; and that this profit must be ascertained (in the case of timber exported from New Zealand) by estimating the value of the timber at the time of its being exported, and deducting therefrom the market value thereof, when in its natural or unmanufactured state (under the proviso to sub-section (7) of section 59), and such cost of felling, transporting and converting, the same into the state or condition in which it was at the time of its export was was allowable by law.

It will be seen that in this case the Court adopted as the " means of ascertainment " of the profit upon which taxation should be based the f.o.b. value of the timber at time of export, less allowable deductions.

388. **Opinions of Witnesses.**—The evidence tendered to the Commission disclosed differences of opinion among witnesses as to the desirability of maintaining the present Federal method of apportionment ; of reverting to some modification of the (f.o.b.) practice under the original section 23 ; or of adopting some other basis.

389. Of the State Commissioners of Taxation, three expressed no opinion upon the matter ; the Queensland Commissioner considered that the assessable income should be the sale price, less all expenses in connexion with the sale, including Income Tax paid in the country of sale. Except as to allowance of Income Tax paid in the country of sale, the Queensland Commissioner's opinion is in line with the existing Queensland Act. The South Australian Commissioner suggested

* Section 19 (2), which reads as follows :—" In the case of any other taxpayer carrying on business both in and outside of the State, his taxable income shall be deemed to be a sum which shall bear the same proportion to the net profits of such business as the assets of the business in the State bear to the total assets of the business, or, in the discretion of the Commissioner, as the total amount of sales in connexion with the business affected in the State bears to the total amount of such sales affected both in and outside the State."

that the market value at the time of export, if the goods are consigned to a Branch house, or the sale price realized abroad, if there is no Branch house, should be the basis; while the Victorian Commissioner favoured the Federal method. He said

> As far as ex-Australian transactions are concerned for Victoria, the Federal method would work quite well. It is the way I have been working . . . . The method of apportionment is elastic enough to meet all cases . . . . As an arbitrary method I should say that is as fair as you can get it.

The witness also said

> The f.o.b. price is more particularly a State matter. . . . The f.o.b. generally is good enough for Inter-State cases . . . .

390. Some representative commercial witnesses favoured taxation in respect of export transactions being based upon prices realized abroad, less all necessary expenses (including, as one or two witnesses suggested, Income Tax (if any) paid abroad). This proposal, which, as shown in the preceding paragraph, had some official support, involves the principle of taxing incomes whatever the source, a principle which is not embodied in the Commonwealth Act.

391. **Advocacy of the F.O.B. Method.** A number of other commercial witnesses favoured the adoption of f.o.b. values as the basis of taxation. Among others, the Sydney Chamber of Commerce made this suggestion, giving as reasons -

(*a*) It enables finality to be reached at once (*i.e.*, as to the amount of tax (if any) which will become payable upon the transaction).

(*b*) Over a series of years there would be no great benefit one way or the other, either for the taxpayer or the Crown.

This suggestion, it will be seen, is a reversion to the method embodied in the original section 23, which section was found to entail considerable difficulty. That difficulty, however, appears to have been largely, if not wholly, due to the inclusion of words confining the meaning of f.o.b. value to **the ruling Australian market value for home consumption of similar goods of similar quality.**

392. That particular goods are produced or manufactured to meet the peculiar requirements of certain overseas markets, or that, for any other reason, any goods have at the time of their export no market value **for home consumption,** would in most cases not prevent their value being ascertained, if not for purposes of home consumption, then for purposes of overseas trade. As to primary products and many secondary products, witnesses pointed out that, in these days of frequent transmissions by cable of market reports, giving prices of the staple articles of commerce in the principal markets of the world—information as to transit and other expenses being also easily accessible—there is little or no difficulty in ascertaining at any time and place the value of most exportable commodities.

393. **Finality.**—The first reason advanced by the Sydney Chamber of Commerce in support of the f.o.b. method, namely, that finality as to the amount of taxation on export transactions would be much earlier reached if, in the case of goods exported for sale abroad, the law allowed the f.o.b. value to be taken as if the exporter had actually sold the goods in Australia at a price equivalent to that value, is an argument which was also stressed by other witnesses. Under the present rule (it was said) one has to wait until reports of final realization in the overseas markets have been received before any progress can be made with the allocation into Australian and ex-Australian of the resulting profit or loss; whereas if the question of taxation were determined by the f.o.b. value at place and time of shipment, the whole transaction could be closed many months earlier, and frequently in the year in which the goods are exported, instead of outstanding for twelve months or sometimes longer, as at present.

394. **Fairness over a Series of Years.**—The second reason put forward by the Sydney Chamber of Commerce in favour of the f.o.b. method, viz., that over a series of years there would be no great benefit one way or the other, either for the taxpayer or the Crown—that is, that on the whole it would operate fairly all round—is one which may be looked at from two points of view.

395. **F.O.B. Method—Disadvantages and Advantages.**—*From the point of view of the taxpayer,* the method has the disadvantages—

(*a*) That where goods are exported for sale abroad and the transaction results in a loss, the taxpayer may be taxable on the f.o.b. basis, and will not be entitled to claim any refund or allowance in respect of that loss.

(*b*) That the tax may become payable before the proceeds of the transaction have been received.

But, in the opinion of the commercial community, as expressed by witnesses, these disadvantages are outweighed by the advantages of simplicity, certainty, and early finality which the method affords. The present method of the Department is based upon the ascertainment of the cost of the goods exported, but cost in many cases is neither known nor ascertainable. The latest statistics available contained in the recently issued official *Year Book* No. **14**, show the total Commonwealth exports for the year ended 30th June, 1920, to be in round figures £150,000,000, of which about £130,000,000 represents the value of the primary products, for the most part not manufactured, of which, if the producer be also the exporter, it would be difficult, if indeed possible, for him or the Department to state the cost with any close approach to accuracy. It is doubtless true that, of the total exports of primary products, large quantities—how large cannot be accurately determined—have already passed out of the hands of the primary producer, and that the exporter is in a position to state accurately the cost of the goods to himself. The general conclusion arrived at, for the reasons indicated, is that the f.o.b. value can, in the great majority of instances, be fixed with greater readiness and certainty than the cost price.

396. *From the point of view of the Revenue,* an opinion adverse to the method was expressed by the Federal Commissioner of Taxation. This opinion, however, appears to have been largely based upon experience under the original and since repealed section 23. We have pointed out above that, in our opinion, the difficulties which arose under that section were in great part due to the inclusion of conditions of a restrictive and not of an essential character. Further, much of the revenue loss which occurred in the working of the section was probably attributable chiefly to the fact that the section was necessarily held to apply to all cases, whereas there are certain groups of cases to which it is not properly applicable. The method also involves the position that, if a profit is made on sale after export, the Revenue receives no benefit in respect of such profit.

In our view, the positive advantages the method is capable of providing justify its incorporation in our Taxation System.

397. The cost (present Federal) method is said to possess the following advantages and disadvantages:—

Advantages—

(*a*) It deals with the transaction when completed and on the basis of actual profit or loss.

(*b*) It allows a deduction for losses (if any) ascertainable from the ultimate sale.

(*c*) It is said to work smoothly and without complaint.

Disadvantages—

(*a*) *From the point of view of the taxpayer,* that great delay often occurs before the amount of tax upon a transaction or series of transactions can be ascertained. For example, delay between the date of export and the date of sale may bring the result into a later tax year.

(*b*) *From the point of view of the Administration,* that the Department is too dependent upon the exporter in respect of the principal factor (cost) used in the calculation by which the amount of taxable profit or deductible loss is determined.

398. **Equality of Opportunity.**—It is pointed out that the present rule may have the effect of handicapping the Australian resident. Many overseas traders visit or are represented here by agents who purchase and export our products for manufacture or for sale in overseas markets. On any profits which these traders earn after the product leaves Australia they are not liable to payment of any Income Tax to the Commonwealth. But, under the prescribed Regulation at present in operation, if the exporter be one of ourselves, he would be liable to pay tax on such proportion of the added profit gained by export as would under the Departmental method be attributable to sources within Australia.

398A. **Inequitable Operation.**—If, because of better management, more favorable conditions or other advantages, *A* is able to produce or acquire a commodity at less cost than *B*, and if they both export at the same time, and on sale overseas realize the same price for their commodities, the

allocation of profit as between Australia and ex-Australia by the cost method shows a larger proportion of profit attributable to Australia on *B's* consignment than on *A's* consignment. This is contrary to the true position, for, as both parcels realized the same price, *A*, having acquired at less cost than *B*, has clearly made a larger profit.

399. **Methods suggested for Adoption.** The f.o.b. method and the present Federal method (the chief factor in which is cost) must be regarded as expedients for effectuating that apportionment of the profits resulting from export transactions which is declared to be necessary, both by administrative experience and by judgments of the highest tribunals. Each method has its merits, its imperfections, and its limitations; each is inapplicable to certain cases or groups of cases. In our opinion, the best results will be obtained by using both methods. The f.o.b. method will, we believe, yield fair results both to the taxpayer and to the revenue in perhaps the great majority of cases. That method should therefore be regarded as primary, and to be applied wherever reasonably practicable, the existing Cost method, modified as suggested in the following paragraph, to be applied to the cases in which the data for satisfactory application of the f.o.b. method are unobtainable.

400. The existing Federal (Cost) method excludes sea freight, marine insurance, and exchange from the calculation by which the profit is apportioned "so as to ascertain the part attributable to Australian sources." The Federal Commissioner of Taxation stated that those items were excluded on the ground that they are equally attributable to the Australian and the ex-Australian part of the transaction. In our opinion, they should be included in the ex-Australian costs.

401. **Inclusion of Adopted Methods in Statute.**—Several witnesses suggested that whatever method is finally decided upon should be embodied in the Statute. This suggestion was invariably made on the ground that a method once adopted should not be subject to frequent change. The contrary view is that, in matters of administrative detail, experience in working and changes of mercantile practice frequently reveal the necessity for a notification of method, and for that reason it has become the practice for the Legislature, as far as possible, to confine itself to matters of principle, leaving matters of detail to be dealt with by regulation, which can, when necessary, be altered without delay and without further reference to Parliament. In this instance we are satisfied that the interests involved are such as to justify prescription by Statute of the methods to be adopted.

RECOMMENDATIONS.

402. **We recommend—**

(*a*) That the Commonwealth Income Tax Assessment Act be amended to provide that in the case of goods exported before sale the value of such goods for the purposes of the Act shall be their market value at the time and place of export.

(*b*) That in all cases where, in the opinion of the Commissioner, the method recommended in the preceding paragraph (*a*) is not clearly applicable, the basis of taxation shall be the series of Rules commonly referred to as the Cost method now in operation, but modified to the extent of including in ex-Australian costs the items of sea freight, marine insurance, and exchange, in addition to the ex-Australian charges now allowed.

(*c*) That, where a difference of opinion arises between a taxpayer and the Commissioner under either of the methods above recommended, or as to which of the two methods respectively recommended in paragraphs (*a*) and (*b*) shall be applied to the case, either party shall have the right of reference to the Board of Appeal.

(*d*) That the two methods above recommended be prescribed by Statute.

In our opinion, the methods above recommended should be applied in the operation of State Income Tax Acts in respect of overseas exports or of transfers from one State to another.

NOTE.—Attention is invited to the note at end of the Section of the Report dealing with Taxation of Income of Australian residents derived outside Australia.

[From the recommendations of this Section of the Report Commissioners Missingham, Mills, and Duffy express dissent. See page 139.]

SECTION XIV.

CASUAL PROFITS.

403. The term "Casual Profits," which it would be difficult to define by way of an exhaustive catalogue of such profits, is, however, well understood as referring to profits of an infrequent or non-recurring nature, not arising from the ordinary business of the person concerned.

404. Casual profits may be divided into two classes:—

(1) Those which arise from occasional transactions entered into with the primary purpose of realizing profit, such as speculation, betting, occasional company promotion gains, occasional cash sales, &c.

(2) Those which arise from occasional transactions not entered into with the primary purpose of realizing profit, such as investment of capital in an income-producing security or purchase of property of any kind for the purpose of personal use or enjoyment.

405. **Commonwealth Law and Practice.**—Under the Commonwealth Income Tax Assessment Act there is no specific provision dealing with the taxation of casual profits. The evidence of the Commonwealth Commissioner shows that the chief provision affecting the matter is the definition of "income." The definition of "income from personal exertion" in the Act includes "the proceeds of any business." The Commissioner states that, while there are many instances of transactions the results of which are difficult to classify as taxable or non-taxable, the broad test is whether the transaction comes under the term "business" or not. The general effect of the Act, as administered, is to leave untaxed what are ordinarily understood as casual profits. Certain statutory exceptions to this practice are contained in section 14 (*d*) of the Act, which makes taxable, subject to specified deductions—

> "Money derived by way of royalty or bonuses, and premiums, fines or foregifts, or consideration in the nature of premiums, fines or foregifts demanded and given in connexion with leasehold estates, and the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person."

In our opinion the retention of the sub-section is undesirable. A partial repeal of the sub-section was effected by the Amending Act passed in December, 1921, which withdrew from its operation profits from the sale of a Mining Lease, where the vendor is a "*bonâ fide* prospector," or, subject to certain conditions, a purchaser from a *bonâ fide* prospector. The complete repeal of the sub-section would leave other transactions of the kind to which the sub-section refers to be dealt with in accordance with the general provisions of the Act which determine whether any particular gain is or is not assessable income.

406. **States Law and Practice.**—In Victoria, Western Australia, and Tasmania, the law and practice with regard to casual profits are similar to the law and practice of the Commonwealth, the usual test as to whether a profit is taxable or not being whether or not it arises in the ordinary course of business. In New South Wales the Income Tax Act provides for the inclusion in taxable income of any gains or profits arising during the year of income from the sale of any estate or interest in land, provided the taxpayer's ownership or interest arose during that year or within the four years next prior thereto. The provision also extends to profits from the sale of shares bought by the taxpayer during the current year or in the two years immediately preceding, and further to any profits from the sale of any other personal property to the value of £50 or upwards bought during the current year. A deduction of losses on such transactions is allowed if incurred during the year of income on the sale by the taxpayer of any estates or interests similar to those from which profit is shown in his return. In Queensland casual profits are taxed, the Act including as taxable profits from the sale of certain minor interests in land, and "all net gains or profits arising from the sale of any personal property whatsoever—whether or not arising or accruing from any business carried on by the taxpayer." The evidence of the Queensland State Commissioner of Taxes shows that losses incurred in casual transactions are allowed as deductions from profits arising in the same year from the same class of transaction, but not otherwise. In South Australia income derived from personal exertion is defined as including "every kind of profit and every kind of gain, whether arising in the course of business or otherwise howsoever, except gifts, legacies and bequests." The South Australian State Commissioner stated in evidence that all casual profits coming within the definition are taxed without exception. In a South Australian case quoted in evidence, the Supreme Court of that State held that the test of a transaction for Income Tax purposes is whether or not it was entered upon with the intention of making an investment as distinct from the intention of making a

profit by re-sale. This interpretation, it will be seen, limits the generality of the definition above quoted. The evidence of the State Commissioner indicates that the practice of the Department is limited to the taxation of profits from transactions arising in the ordinary course of business and not from casual transactions.

407. **Opinions of Witnesses.** Some witnesses favoured the taxation of gains of every kind, but the greater volume of evidence was unfavourable to that proposal, largely because of the objections enumerated in paragraph 410 below.

408. The Commonwealth Commissioner of Taxation in his evidence suggested that, if the amendment or repeal of section 14 (*d*) were considered, it would be proper to consider also the repeal of the proviso to section 20 (*i*). Section 20 (*i*) expressly provides that a deduction from assessable income shall not be made in respect of :—

> " any wastage or depreciation of lease or in respect of any loss occasioned by the expiration of any lease " ;

but a proviso to that sub-section authorizes the Commissioner, in cases where a taxpayer has made any payment in the nature of a fine or premium for a lease or renewal of a lease, or for the assignment or transfer of a lease, to allow as a deduction the annual proportion of such payment in each year of the unexpired term of the lease. The Commissioner suggested that :—

> " If [by repeal of section 14 (*d*)] the person who receives such a payment is to be exempt from Income Tax upon it, then it would appear to be reasonable to deprive the payor of the right to amortize it out of his profits."

The deduction allowed by the proviso to section 20 (*i*) appears to be correctly based upon the view that a payment in the nature of a fine or premium for a lease is in effect a payment of rent in advance, and as rent, should be allowed as a deduction, either in one sum, or, as the sub-section enacts, in annual proportions spread over the term. In our opinion, this view justifies the retention of the proviso. But if a lease premium is treated as commuted rent, so far as the payor is concerned, it is in our opinion both logical and reasonable to regard it as rent (and therefore assessable income) in the hands of the payee. It might be harsh to tax the payee on the whole sum as income in the year of receipt, but it would be reasonable for taxation purposes to distribute the payment over the term of the lease, just as it is distributed for purposes of allowance to the payor.

409. **British Commission View.**—The matter was considered by the British Royal Commission on the Income Tax, 1920, and in their Report, while the equity of taxing casual profits was recognised, the difficulties of administration were considered too great to justify a recommendation for the inclusion of every kind of gain within the ambit of Income Taxation. An official witness before that Commission, representing the Board of Inland Revenue, stated :—

> " The Board are in substantial agreement with the view that has obtained in the past, that any amount of tax that would be derived from an attempt to pursue transactions of every kind, where an intention to derive a profit on sale could be presumed to have existed, would be negligible compared with the trouble and irritation that it would involve. They have also especially in mind that private minor transactions of this kind are to so great an extent hidden from view that, even if an attempt to follow them did in fact result in any additional revenue, it would be to a very great extent a voluntary contribution by the most conscientious taxpayers, and would be likely, on that ground, to give rise to serious dissatisfaction."

The British Commission recommended that :—

> " Any profit made on a transaction recognisable as a business transaction that is, a transaction in which the subject matter was acquired with a view to profit seeking—should be brought within the scope of the Income Tax."

This recommendation goes a little farther than the present Commonwealth practice.

410. The leading and, in our view, decisive objections to an attempt to collect Income Tax upon every kind of casual profit and gain are :—

(1) The extreme difficulty of tracing transactions and preventing evasions. As shown above, in the quotation from evidence before the British Commission, the view there taken, which also was the opinion of a number of witnesses appearing before us, is that any revenue derived would be to a great extent a voluntary contribution from conscientious taxpayers.

(2) The necessity for allowing losses on casual transactions as a deduction from assessable income. There would be a strong incentive to record and claim deduction on account of casual losses, but no corresponding inducement to record casual profits, and the net revenue gain would probably be small. The British Commission remarks that :—

> " In countries where profits of this nature are taxed, allowance, if any, for losses is generally granted only against profits of the same character."

That Commission considered that losses from speculations and investments should not be set off against ordinary trading profits. One of the members of the British Commission, dissenting from the Report on this point, contended that, if casual profits are taxed as part of the regular income, losses on casual transactions should be set off against the total income. It seems clear that to confine the set-off of losses upon casual transactions against profits of the same character would be illogical, except in conjunction with a provision that casual profits should be taxed as if constituting a separate income—that is, not aggregated with income from other sources.

(3) The heavy cost of administration which the alteration would involve compared with the relatively small net revenue gain.

RECOMMENDATIONS.

411. **We recommend :—**

(1) That the *Commonwealth Income Tax Assessment Act* 1915–18 be amended by the repeal of section 14 (*d*). (It may be necessary to consider whether any further statutory action will be required to preserve the immunity from taxation of the proceeds of sale of a Mining Lease, which is presumably effected by section 6 of the Amending Act of 1921.)

(2) That the proviso to Section 20 (*i*) be retained, and that any payment of the kind enumerated in that proviso be regarded as rent and therefore as assessable income in the hands of the recipient.

(3) That the Commissioner be empowered to allow the tax chargeable in respect of any such payment to be distributed over the unexpired period of the lease in the manner prescribed for the distribution of the deduction allowed to the payor.

(4) That no alteration of the Act be made with the object of imposing tax upon Casual Profits.

[From this Section of the Report Commissioner Duffy expresses dissent. See page 143.]

SECTION XV.

LIVE STOCK VALUES.

412. **Commonwealth Method.**—In the original (1915) Commonwealth Income Tax Assessment Act, Section 14 (*a*) provided that :—

> The income of any person shall include—
>
> profits derived from any trade or business and converted into stock-in-trade or added to the capital of or in any way invested in the trade or business :
>
> Provided that for the purpose of computing such profits the value of all live stock, produce, goods and merchandise (not being plant used in the production of income) not disposed of at the beginning and end of the year in which the income was derived shall be taken into account.

The amending (1918) Act did not amend this Section, but there was added to Section 3 a definition of value in relation to live stock in the words :—

> " Value " in relation to live stock means *the value as prescribed.*

413. Under the authority given in Section 65 of the Act, a regulation was framed prescribing the method of valuing live stock on hand at the end of the accounting period for the purpose of the Commonwealth Income Tax Assessment Act. The regulation provided for live stock to be taken into account at specified standard values on the lines of the present schedule for natural increase. Subsequently this regulation was withdrawn and substituted by the following, which is now in force :—

> 46. (1) For the purpose of paragraph (*a*) of Section 14 of the Act, the value of live stock on hand at the beginning and end of the year in which the income was derived shall be calculated on the basis of the cost price of the stock.

(2) The cost price of natural increase and the cost price of other stock for which the cost price cannot be stated by the taxpayer shall be deemed to be the fair average values as set forth in Table III* in the Schedule.

(3) Where live stock is purchased during the year and is kept separate and apart from any other stock owned by the taxpayer, it shall be valued at purchase price at the beginning and end of each trading year during which it is retained.

(4) Where live stock which has been purchased is merged into and becomes part of the general flock or herd of live stock owned by the taxpayer, the stock remaining on hand at the end of the trading year in which the purchases were made shall be valued at the average cost per head ascertained by taking the stock on hand at the beginning of the year at the actual cost, if obtainable, or, if not obtainable, at the average cost per head arrived at under the War-time Profits Tax Regulations at the beginning of the accounting period upon the income of which income tax for 1917-18 is payable, and in each succeeding year at the average cost arrived at under this sub-regulation for the last preceding year, together with the natural increase at the fair average value as set forth in Table III. of the Schedule and the stock purchased during the year at the purchase price of that stock.

(5) All live stock which have died or have been killed for food during the trading year shall be valued at the average cost for the stock on hand at the end of the trading year arrived at under sub-regulation (4) of this regulation.

414. **States' Methods.**—The following is a summary of the methods of fixing live stock values at present in force in the several States:—

New South Wales.

(1) No method is prescribed by regulation. The State Commissioner explained in evidence that he allows a wide latitude to taxpayers. The general practice of the Department is to allow the stock-owner to fix his own values, such values once fixed to remain constant, though this practice is not invariable.

Victoria.

(2) A statement furnished by the Victorian Commissioner of Taxes shows that:—

There are no regulations in force dealing with the valuation of live stock, the value fixed depends on the circumstances of the particular cases.

When the Act came into operation in 1895 taxpayers were allowed to bring in their stock at the ruling market rate at that date, and in a number of cases that method has been maintained ever since with regard to natural increase. In the particular year, stock purchased was brought in at cost, and the stock on hand at the end of the year was averaged to arrive at the value.

In 1906 taxpayers were allowed the option of making their returns on the cash basis—actual receipts and actual expenditure—or continuing on the trading basis, and a large number adopted the cash basis.

The attitude of the Department is that where a taxpayer has adopted either of the above methods he must adhere to it. All new cases have, for some years, been required to adopt the trading basis, and the market value for stock valuation purposes is generally the basis accepted. In some few instances where there have been practically no sales or purchases, the properties being wool-growing propositions, the original values have been maintained right through.

Queensland.

(3) The practice of the Department is that herd values (*i.e.*, the values at which the owner originally returned the stock) are adopted for the reared stock. Young stock are brought into account the first year at one quarter values, but the second year are brought in at average values. This is a statutory obligation. In 1907, provision was made in the Act for those persons who did not wish to bring their live stock into account. to omit them. The Queensland Commissioner stated that numbers of taxpayers availed themselves of this provision, but are gradually reverting to the old method.

South Australia.

(4) The method in force in South Australia is, as stated by the Commissioner of Taxes, that—

Reduction is allowed for all purchased stock at cost price, the sale moneys of all stock sold, whether purchased stock or natural increase, are required to be accounted for. Purchased stock, if unsold at the end of the year, are required to be accounted for at cost price. Natural increases when on hand are required to be accounted for at their value on the land where they are.

Western Australia.

(5) A schedule of rates representing the average cost value of cattle and sheep in various districts was agreed to at the inception of Income Taxation in Western Australia in 1906 by the pastoralists of that State, after several conferences with the then Commissioner of Taxation, and

* This table is set out in paragraph 426 (page 121).

has since remained in force without alteration. The approved "flock" returns apply to all classes of stock, including stud stock and natural increase. The full cost of purchased stock is allowed as an outgoing in the year of purchase. The schedule rates are as follows :—

	Per Head. Cattle.		Sheep.	
	s.	d.	s.	d.
Kimberley Division	20	0	4	0
North-west Division	30	0	5	0
Western Division	40	0	6	0
South-west Division (E. portion of)	60	0	8	0
,, ,, (S. portion of)	80	0	10	0
Eastern Division	40	0	6	0
Eucla Division	40	0	6	0

TASMANIA.

(6) The Act provides that—

additions to stock resulting from natural increase shall be reckoned in their first year at such values as the Commissioner may consider fair and equitable, reserving to the taxpayer the right of objection to such values should he be dissatisfied.

There are no prescribed regulations bearing on the matter. The system adopted by the Department is that :—

the total value of the sheep or cattle (as the case may be) on hand at end of the previous year is added to the sum paid for purchases during the year, and the average per head is applied at the rate for calculating the value of the stock (under either head) on hand at the end of the year. Any lambs included in the number of sheep given are taken in at ten shillings per head, or less than ten shillings if the average value of the sheep should be less than that sum, and calves are taken in under the same conditions at thirty shillings per head.

CRITICISM OF COMMONWEALTH REGULATION.

415. The Commonwealth Taxation Department issued for the guidance of taxpayers directions explaining its practice under the regulation quoted in paragraph 252 from which the following is an extract :—

Sheep purchased in lamb or in wool should be shown at full purchase price at the end of the year, if then held, even though the wool has been cut or the lamb dropped.

How the regulation, as thus explained, may operate will be seen in the following illustrative example :—

A grazier in Victoria purchases in March (say) 1,000 four-year old ewes in nearly full fleece, heavy in lamb, for, say, 42s. Then assuming a drop of 80 per cent., if the lambs be marked and the ewes shorn in June, he will have to show as **Income** for that year :—

800 lambs, at 12s. 6d.		£500
Wool from 1,000 ewes, say		600
1,000 shorn ewes on hand, which must, according to the rule, be taken in at the same price as the full-fleeced pregnant ewes, viz., 42s... ..		2,100
Total income		£3,200
Expenditure.		
1,000 ewes in lamb, nearly full fleece, at 42s.	£2,100	
Cost of shearing..	150	
		£2,250
Taxable income		£950

By this method, the grazier is assumed to have made a profit of £950, and is subjected to taxation upon it, when it is evident that the amount shown as profit (£950) is obtained only by making the erroneous assumption that a ewe which has dropped her lamb and been shorn of her fleece is as valuable as a ewe which carries both.

416. Objection to the "average value" method as set out in Commonwealth Regulation 46 (4) as to stock on hand at the end of the accounting period was almost unanimously voiced by witnesses representing primary producers. They contended that this method is unjust and

complicated. Witnesses stated that owing to the operation of the average cost method, the purchase of high-class rams adds to the average taxable value of the whole flock, though it is not an uncommon experience for a proportion of the rams, shortly after purchase, to prove no more valuable than flock sheep. In such cases the Department makes no allowance for this reduction in value. It was also contended that the same position arises in varying degree with any stock purchased which afterwards depreciate in value. Especially is this effect felt at a time like the present when stock values are low, though recent purchases were made at high prices. If a purchaser buys a line of stock at a price per head higher or lower than the average price of his own stock, and sells them during the same year, unless he can prove that they have been paddocked apart from the rest of his stock, he is not allowed to show this tranaction separately in his return, but must supply the price of the recently acquired stock in arriving at the average cost value of the stock on hand and thus, perhaps, show a profit where an actual loss had taken place or *vice versâ*.

417. The complaint that the present Commonwealth method is complicated and difficult for the average producer to understand is well founded. While taxpayers operating on a large scale are in a position to engage expert assistance to deal with the necessary calculations, the position is very difficult for many small producers who have to depend upon their own resources to arrive at the correct figures.

418. **Alternative Methods Suggested.**—Witnesses were by no means unanimous as to the remedy to be applied to overcome the present difficulties as to valuation of live stock. The three most important suggestions submitted may be summarized as follows:—

1. The taxpayer to make up his return on a cash receipts and disbursements basis ignoring stock on hand altogether.
2. The taxpayer to fix a standard value for each class of his own live stock, such value to remain constant.
3. The taxpayer to take live stock on hand into account at market value at the 30th June each year.

419. The cash receipts and disbursements basis (method 1), while it possesses the element of simplicity, does not reflect the true trading results of the taxpayer, for a taxpayer may devote the whole of his profits over a period to the purchase of stock, and would thus show no taxable surplus. On the other hand, a taxpayer may be compelled to realize practically the whole of his stock, and under this method would then show a taxable surplus, although in fact the year's operations may have resulted in a heavy loss.

420. The Queensland Act of 1907 gave the taxpayer the option of making his returns on this basis. The Queensland Commissioner stated in evidence:—

> The experience of people who took advantage of the 1907 Act and did not return stock has been quite against the taxpayers. It means that some day they have to pay enormous taxation. They have to pay on the accumulated profits of years, without deductions.

421. The South African Income Tax Act of 1914 gave the taxpayer the choice of adopting for the purpose of income tax returns either the ordinary accounting method or the cash receipts and disbursements method, with the proviso that the decision of the taxpayer in this regard should be irrevocable. A Committee of Inquiry on Taxation of Incomes derived from farming operations, appointed under Government notice in 1917, recommended:—

> That the method allowed, under Section 9 of Act No. 41 of 1917, to persons carrying on farming operations, of framing their returns on a receipt and expenditure basis, should be abolished, and that all persons carrying on farming operations should be required to frame their returns on the same basis as other taxpayers.

422. The second method proposed, that of allowing the taxpayer to fix a flat rate for his stock, such rate to remain unchanged, was strongly advocated by many representatives of pastoralists. It was stated that this method is generally adopted by pastoralists in carrying on their own business, and would work out equitably over a number of years. The method would certainly be simple, but would rarely, if ever, reflect the true result of each year's operations. If live stock were purchased at a price in excess of the standard used by the grazier, and, not being then sold, were required at the end of the year to be taken into account at the standard figure the operation would result in an apparent loss. Sale of the stock in a subsequent year at the actual figure at which it was originally purchased would in the year of sale show a profit (as compared with the standard at which it was taken into account), the method thus resulting in incorrect statements and in possible loss to either revenue or taxpayer, for in fact there may have been no loss on the transaction in the first year, nor any profit in the year of realization. This method also ignores the changes which are constantly taking place in the intrinsic value of stock and the fluctations of the market which, owing to change of season and other factors, are probably more variable than those of any merchantable property.

423. The third method, that of taking live stock on hand into account at market value, was also strongly recommended, it being contended that, as a merchant or trader is allowed to take his stock on hand into account at cost or market value, whichever is the less, the same option should be allowed the stock-owner. This appears to be a reasonable view, for it is difficult to understand why a merchant who pays 30s. per ton for goods should have (as he now has) the option of returning such stock on hand at 20s., should the market decline to that figure; while a sheep farmer who pays 30s. per head for sheep and at the end of the year finds the market value has declined to 20s. per head has not the same option. As, however, all witnesses agreed that stock-owners are unable to ascertain the cost of stock bred by them, it would be practically impossible to exercise the option of using cost or market value in respect of natural increase. In the case of purchased stock, the option would be exercisable where stock-owners are prepared to keep accounts with sufficient accuracy to satisfy the Department.

424. Several witnesses, including Commonwealth and State officials, contended that it would be impracticable to determine market values, especially in the case of stock on what are known as "out-back" stations. There may be some difficulties in the case of properties far away from market centres or properties from which in seasons of drought or flood stock could not be travelled, but even in those cases a sufficiently close estimate of value could probably be made. In the case of stock within reasonable distance of market centres, no difficulty should be experienced. Should there be any dispute between the Department and the taxpayer, a ready means of check would be afforded by the stock market reports, which are regularly available from all centres.

425. **Taking Natural Increase into account.**—Differing opinions were expressed by witnesses as to whether or not natural increase in a herd or flock should be taken into account before sale. Some witnesses strongly urged that natural increase should not be included in the income tax return, on the ground that such increase does not represent income to the taxpayer until disposed of; whilst others admitted the justice of taking it into account, but objected to the standard values fixed by the Department as being too high. Others again favoured the Queensland method of taking young stock into account in the first year at one quarter value of grown stock and in subsequent years at full value.

426. The present Commonwealth regulation requires the inclusion of natural increase in the stock on hand at standard values varying in different States, and in Western Australia varying according to divisions of that State, as shown in the following table:—

TABLE III.

Fair Average Value of Live Stock (other than Stud Stock).

—	Sheep.	Cattle.	Horses.	Pigs.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
New South Wales	0 10 0	6 0 0	6 0 0	1 0 0
Victoria	0 12 6	6 0 0	15 0 0	2 10 0
Queensland	0 9 0	3 0 0	4 0 0	0 15 0
South Australia	0 10 0	5 0 0	7 0 0	2 0 0
Tasmania	0 10 0	3 0 0	15 0 0	0 15 0
Northern Territory	0 12 6	2 0 0	5 0 0	..
Western Australia	0 5 0	1 15 0	East Kimberley	
,, ,, ...	0 5 0	2 5 0	West Kimberley	
,, ,, ...	0 7 0	2 10 0	N.W. Division, E. of Tropic of Capricorn	
,, ,, ...	0 9 0	3 10 0	N.W. Division, S. of Tropic of Capricorn	
,, ,, ...	0 12 0	4 10 0	S.W. Division	
,, ,, ...	0 7 0	2 10 0	Eucla and Central Division	
,, ,, ...	0 5 0	1 15 0	Eastern Division	

427. This variation of values according to geographical boundaries called forth sharp criticism, as will be seen from the following extract from evidence:—

The ridiculous aspect that is lent to this matter can best be shown by drawing attention to the fact that the arbitrary value is only determined according to the fixing of an imaginary geographical line that separates the various States. Take, for example, the boundaries of Queensland, New South Wales and South Australia. It all depends on which side of this line, where the three States touch one another, a calf is born, as to whether it immediately becomes worth three pounds, five pounds, or six pounds.

An example was given in which a Company operating on the northern boundary of New South Wales showed a profit in the Company's books of £42 16s. 7d. for the year ended 30th June, 1919, and paid New South Wales income tax £3 13s. 9d., but paid Commonwealth income tax

£601 17s. 6d. This was due to the Commonwealth regulation taxing the value of the calves at £6 per head, whereas the firm had valued them at £3 per head. Had the calves been dropped on the other side of the firm's northern fence, the amount of £3 per head would have been accepted by the Federal Department as the correct valuation, and the taxable profit would have been only £42 16s. 7d. Several instances were submitted indicating that it was only by the inclusion of the value of natural increase that a taxable surplus was shown, though such increase was subsequently lost through drought. There is no doubt that the present regulation may create fictitious "taxable" incomes and in years of declining value for live stock would certainly do so.

428. The validity of the Departmental regulation fixing varying average or standard values for live stock has recently been challenged in an action instituted by a Tasmanian taxpayer before the Supreme Court of that State, apparently on the ground that the regulation infringes Section 51 (ii) of the Commonwealth Constitution. The question has been referred on a case stated by the presiding Judge to the High Court.

429. **Natural increase should, in our opinion, be brought into account in the year of marking. This is the practice of the industry, and is accepted by the Department. For taxation purposes, natural increase should be stated in terms of the market value per head of such increase on the property at the close of the accounting period.** This would give a correct view of the taxpayer's position, for it cannot be said he has made more profit on the young stock than he could realize for them at that time. If they are subsequently sold at an advance on the figure set down, the additional profit will be brought to account in the year in which it is actually made. If lambs were worth 5s. per head at 30th June, 1921, and subsequently sold at 8s. per head, the profit (*i.e.*, the difference between 5s. and 8s.) is earned in the year of sale and not prior to 30th June, 1921. Similarly, if the sale resulted in a loss, that loss would properly attach to the year of sale. But at the 30th June, 1921, the position of the taxpayer was that he could have realized the 5s. per head, therefore the profit contained in the 5s. per head properly attaches to that year.

CONCLUSION.

430. After earnest consideration of the methods of valuing live stock now in operation in Australia and elsewhere, and of the suggestions of witnesses, we are of opinion that the "cost or market value" method is the soundest in theory, most closely accords with general convenient practice, and in operation will give the fairest results. The adoption of this view would necessitate some special provision for the transition from the present Departmental method.

431. Some variation of the manner in which gains made on the eventual realization of stock when a stock-owner ceases business are dealt with for taxation purposes would also become necessary. The existing method was found to require some corrective. The Department, therefore, decided that—

Tax is only charged on that part of the profit which represents the profit derived from the sale of stock which would have been sold if the business had been continued instead of being sold.

This decision was based on the ground that :—

if the whole of the live stock of an ordinary pastoral business . . . . . is sold off at prices greater than the (prescribed) cost or book values, the whole of the resulting profit is not liable to income tax, since part of it at least represents the profit on the sale of a fixed asset.

Clearly, the eventual "gain" on realization in such a case is not wholly due to an appreciation in values, but partly at least to the fact that the arbitrary values prescribed by regulation turn out to be less than the sum realized by the sale.

432. If, however, the method of taking in stock on hand at the end of the accounting period at cost or market value be reverted to, there will no longer be necessity for any such corrective, as the whole of the gain from a realization sale of the stock would then be treated in the same way as profit on a realization sale of ordinary merchandise—that is, it would be regarded as taxable income, and not as an accretion of capital. The stock-owner, under the existing practice, is exempt from tax in respect of any surplus resulting from final realization as between the prescribed figures and the sale price, and, seeing that re-introduction of the cost or market value method will exclude him from this exemption, it is necessary that some adjustment be made to avoid possible injustice. That can be done by providing that, at the moment in which the change of method occurs, the stock-owner should close his accounts for taxation purposes on prescribed values, and should simultaneously notify the market values at that date to the Department, by memorandum, but not by incorporation in those accounts; the operations of the following year would then be opened with the market values so submitted. It should also be provided that, if the total value with which the year is closed exceeds the total market value with which the first year under the new system is opened, the excess shall in the assessment for such year be treated as a deduction from the taxable income of that year, and any part of the excess not fully absorbed in that year shall in the assessment for the following year or years be treated as a deduction from the taxable income of such year or years

till it is fully absorbed. If the business is sold off before the excess has been fully absorbed, the unabsorbed balance shall be deducted in the same way from any profit resulting from the final sale.

433. Unless the context requires another meaning, the term "live stock" in this section of the Report is used as meaning live stock generally, including sheep, cattle, horses, mules, camels, donkeys, goats, pigs, ostriches, and all other live stock usually depastured by a grazier or farmer, whether his business be that of a breeder or a dealer in such live stock.

434. Horses, mules, working bullocks broken to the yoke, camels, and other draught animals and beasts of burden used by primary producers, merchants, manufacturers, and others as part of the working plant of their business (and not kept principally for purposes of breeding or of making a direct profit on the purchase and sale thereof) should not be regarded as necessarily included in the term "live stock" as used in this section. Such beasts of burden, if regarded as working plant, should be so treated for purposes of taxation, and all moneys expended thereon dealt with in the same manner as moneys expended on other manufacturing or trading plant, and subject to depreciation at such rates and in such manner as may be prescribed.

435. Dairy stock may be regarded as more closely related to working plant used for the production of milk, cream, butter, cheese, &c., than live stock in the more general sense. In our opinion, the owner of live stock used as beasts of burden and of dairy cattle should therefore have the option (to be exercised in the first taxation return lodged by him after the inception of this system, or after the commencement of a new business) of declaring whether his working and dairy stock shall for purposes of taxation be treated as live stock in the more general sense or as working plant. The declaration should be regarded as final, and the taxpayer's returns should be dealt with accordingly by the taxation authorities.

RECOMMENDATIONS.

436. **We recommend :—**

1. That the provisions of the Income Tax Assessment Act, authorizing the issue of regulations prescribing values of live stock, be repealed.

2. That in future (except as set out in the succeeding recommendation) stock-owners be allowed (and required) to show the values of their live stock, including natural increase on hand at the end of an accounting period, at cost or at market value, whichever is the less.

3. That, as an exception to the general rule set down in the preceding recommendation, beasts of burden and dairy cattle shall, if declared by the owner as working plant, be so treated for the purposes of taxation.

4. That in order to effect smooth and equitable transition from the present to the recommended method, the procedure outlined in paragraph 432 be adopted.

In concluding this, our Second Report,

We have the honour to be,
Your Excellency's Most Obedient Servants,

W. WARREN KERR, Chairman.
JOHN JOLLY.
J. G. FARLEIGH.
W. T. MISSINGHAM.
JOHN THOMSON.
S. MILLS.
M. B. DUFFY.

S. E. JELLEY,
Secretary.

Melbourne, 15th April, 1922.

HARMONIZATION OF COMMONWEALTH AND STATE TAXATION.

RESERVATION.

1. This is one of the most important and one of the most difficult of the problems intrusted to the Commission. Much time and serious thought have been given to it, and with due deference to my colleagues, I much regret that for reasons set out hereunder I am not able to concur in the principal conclusions and recommendations of this section of the Report.

2. **Amalgamation.** I agree, however, in its condemnation of the scheme of amalgamation which has been entered into between the Commonwealth and Western Australia. The scheme should not, in my opinion, be continued, nor should similar arrangements be entered into with any other State. I agree with the conclusion (par. 240) of the Commission that "any scheme of harmonization or amalgamation which still leaves Commonwealth and State authorities both demanding revenue from the same people by the same mode of taxation can be at best only an imperfect remedy for the existing disabilities," and though any system of amalgamation, even if it do not amount to practical absorption of one authority by the other, mitigates some of the evils existing under divided authority, it perpetuates others which should not be allowed to continue.

3. **Alternative Recommended.**—The ultimate goal sought in the Report is a delimitation of existing legislative powers of both Commonwealth and States by the compulsion of an amendment of the Constitution. The Commonwealth is to surrender (subject to revocation in the case of war) the power to impose certain direct taxes other than income tax, and the States are to surrender irrevocably the power to impose income tax, but both Commonwealth and State retain individually the power to impose direct taxation in any other form.

4. The first thing which strikes a reader is the ineffectiveness of this scheme in establishing and maintaining harmonization of Commonwealth and State taxation. With a line so indefinitely marked and so zig-zag in character, there is nothing in such an arrangement to prevent the Commonwealth or any State from levying a Wealth tax, an Ability tax, a Property tax, a Corporation Tax, a Dividend tax, or some other direct tax, however named, which unless it is confiscatory and tends to exhaust the subject of the tax must be a direct attack upon and be paid directly out of the income of the people—the same income, though indirectly approached, as will be already taxed directly by the Commonwealth. This would not ameliorate but would aggravate existing evils, and some such step the States, if they are to avoid insolvency, might be compelled to take, seeing how seriously their revenue would be depleted and the field limited by their being excluded from imposing an undisguised income tax.

5. The recommendation of the Commission fails to suggest any clearly defined limit beyond which neither Commonwealth nor States respectively may trespass. Such a line suggests itself in Direct as distinct from Indirect Tax, or taxes on Consumption as distinct from taxes on Income, or Customs and Excise as distinct from all other taxes. Permanent or even temporary harmonization will not be accomplished by merely serving out to one side or the other "existing forms of direct taxation" at present in operation without regard to the imposition of direct taxes in other forms or under other names, but by some mutually acceptable agreement under which *without surrender of powers* there are, for purposes of administration only, allocated to the Commonwealth on one hand and to the respective States on the other hand certain clearly defined and well understood spheres upon which so long as certain conditions are fulfilled the other shall refrain from entering as active collector for a stipulated time, or pending certain events.

6. **Resulting Financial Position.**—Apart from the Constitutional questions involved which will be mentioned later, what will be the financial position of the Commonwealth and the States if effect be given to the recommendation (par. 249) of the Commission in which it is proposed that the Commonwealth permanently surrender to the States Land, Estate and Entertainment Taxes and the States surrender to the Commonwealth Income Tax and the Capitation Grant from Customs? It would be rash to forecast that in ten years the revenue from these sources will be the same as to-day or to what extent they will have changed, but it may be reasonably assumed that, if other conditions continue unaltered, whatever the increase be, their relative proportions will be much the same as now. Using, then, the latest figures available (those for 1919–1920), the recommendation of the Commission proposes that the Commonwealth surrender to the several

States certain sources of revenue and in turn receive from the States other sources which, with their yield for the year named, contrast as under :—

Commonwealth surrenders to States.				Showing 1919–1920 Revenues.	States surrender to Commonwealth.			Commonwealth gains and States lose.
A. Federal Land Tax.	B. Federal Estate Tax.	C. Federal Entertainment Tax.	D. Total.	E. States.	F. State Income Tax.	G. Customs Capitation Grant.	H. Total.	I.
£	£	£	£		£	£	£	£
1,875,634	607,031	234,587	2,717,252	New South Wales	2,308,267	2,533,234	4,841,501	2,124,249
676,271	542,036	176,411	1,394,718	Victoria	915,551	1,878,449	2,794,000	1,399,282
322,546	127,912	62,695	513,153	Queensland	2,023,316	912,628	2,935,944	2,422,791
199,350	95,560	39,105	334,015	South Australia	662,384	588,603	1,250,987	916,972
149,693	158,418	34,350	342,461	Western Australia	416,136	564,735	980,871	638,410
75,179	41,157	10,934	127,270	Tasmania	279,476	272,514	551,990	424,720
3,298,673	1,572,114	558,082	5,428,869	All States	6,605,130	6,750,163	13,355,293	7,926,424

Commonwealth surrenders to States £5,428,869
States surrender to the Commonwealth a total of £13,355,293
Being a positive annual gain to the Commonwealth, and a loss to the States, of £7,926,424
Figures in column B are approximate—the others may be accepted as accurate.

7. In the same year the total sum collected by the States from Probate and Succession Duties, Stamp Duties, Land Tax, Income Tax, Licence Fees, Dividend Duty, and all other forms of direct taxation was £14,291,633, so that the recommendations of the Commission appropriating for the Commonwealth £7,926,424 in excess of the total it surrenders leaves to the States only £6,365,209. The deficiency is distributable thus :—

A.	B. State Revenue from Taxation, 1919–1920.	C. Net Loss by Proposed Surrenders.	D. Percentage of Loss (C) to Revenue (B).	E. Remainder after Proposed Surrenders effected.	F. Percentage of Remainder (E) to Revenue (B).
	£	£	%	£	%
New South Wales	4,962,518	2,124,249	42·806	2,838,269	57·194
Victoria	3,159,767	1,399,282	44·284	1,760,485	55·716
Queensland	3,323,745	2,422,791	72·893	900,954	27·107
South Australia	1,391,830	916,972	65·882	474,858	34·118
Western Australia	844,197	638,410	75·623	205,787	24·377
Tasmania	609,576	424,720	69·675	184,856	30·325
All States	14,291,633	7,926,424	55·462	6,365,209	44·538

8. With Income Tax, the most elastic and most productive of the taxes, forbidden them, how are the States to make up such heavy shrinkage of their resources? The recommendation of the Commission is little help except to emphasize the poverty of the States. This is recognised, for somewhat indistinctly in the closing sentences of paragraph 249, and more clearly in the 8th section of the following paragraph, the report anticipates crippling financial stringency among the States. Foreseeing the inevitable results of the "solution," the Report refers to section 96 of the Constitution :—

> "During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit."

9. This section was introduced as a temporary and special provision to allow of assistance being extended to any State seriously crippled at the establishment of the Commonwealth by the loss of Customs and Excise Duties, which formed a large part of the Revenue of some of the States, when these sources were handed over to the Federal Government, but it was never intended to establish a permanent alms chest for needy States. Thus Quick and Garran write—"The close connexion which clause 96 has historically with the Braddon Clause makes it seem probable that the Premiers intended that it should survive while the Braddon Clause survived, and no longer. . . . . The medicine in cases of emergency, not the daily food of the Constitution."

10. The Commission further recommend "That, as a means of facilitating the financial adjustments which will become necessary under the provisional scheme, especially in the early years of its operation, the Commonwealth grant such financial assistance as may be deemed to be reasonable to any State or States upon such terms and conditions as may be mutually agreed upon."

11. What necessity is there for any financial adjustments under the provisional scheme in the early years of the operation, seeing that during that period the Commonwealth and the States under this proposal continue to possess and exercise the right to impose income tax? Clearly, none whatever. The fears of the Commission are really for the years which follow, when the States would be by its scheme deprived entirely of the right of collecting Income Tax.

12. What respect is shown for the sovereignty or independence of the States which pictures them as empty-handed, hanging upon the Commonwealth to grant "such financial assistance as may be deemed to be necessary?"; and this not as a temporary expedient during the ten probationary years during which no such expedient can be required but as a perpetual heritage of enforced poverty? And why are they to look to the Commonwealth for assistance? Is it not because by the scheme which the Commission recommends it is expected that the coffers of the Commonwealth will be again filled to overflowing? It was the expectation, prior to Federation, that the revenue from Customs would be far in excess of Federal Expenditure (and would thus leave in the hands of the Commonwealth a large distributable surplus) which dictated the insertion in the Constitution of the Braddon Clause and its handmaid Clause 96. The alluring attractions of Federation appeared to justify a temporary disturbance of State finances. Is it again seriously contemplated that the Commonwealth treasure chest be filled to repletion by impoverishing the States? That there be established, not as a passing phase of the period of transition, but as a continuing condition, excessive opulence of the one and chronic impecuniosity of the others? Is it the relation which should obtain between Commonwealth and States? Is it a healthy state of things for either? Six independent "Sovereign" States reduced to a habitude of vassalage, dependent for part of their revenue upon eleemosynary assistance given to them "as a matter of grace, and not of right," and in measure as may, in the opinion of the donor, "be deemed to be necessary?" Dives, within, clothed in purple and fine linen, and six mendicants seated at the gate begging for the crumbs which fall from the rich man's table and contending for each morsel! This is the condition of things involved in the recommendations of the Commission, and no advantage, not otherwise obtainable, is in view to warrant the sapping of the financial independence of the States. It implies a derogation of the dignity of the States, and will deprive them of powers which they must possess if they are to carry unrelieved present responsibilities. It menaces the Federal relation which at present subsists between them and the Commonwealth, and is more compatible with, and might well be used to hasten the advent of, unitary Government. It will weaken the principle of Federation which is fundamental in the Constitution, and should, until some other principle is adopted by the people, dominate the relations between the Central and the State Governments.

13. **Necessity for Commonwealth Retaining Unlimited Power with Respect to Taxation.**—While strong objection must therefore be taken to the proposal to restrict the taxing power possessed by the States, still stronger objection must be taken to the proposal of the Report to restrict the taxing power of the Commonwealth at *any* time irrespective of the existence or non-existence of war. A Government which during a great struggle can offer no permanently dependable security invites the attacks of its enemies; the safety of a country at war does not depend mainly on the taxes which the Government can raise during the progress of hostilities, but upon moneys borrowed on security of the future revenues which the Government can continue to command and pledge to obtain the moneys to carry on operations. The unrestricted power to tax and to enforce its collection by in the last resort distraint, if necessary, upon the property of the individual citizen must always remain a power—a sword sheathed, it may be, but ready to be drawn and used when required—in the control of the authorities intrusted with Defence and the supreme interests of the Commonwealth. The pioneers of Federation realized this when against expressed opposition it was proposed that unrestricted power of taxation be bestowed upon the Federal Government, though at that time far more revenue than was apparently necessary for its needs was receivable from Customs and Excise. Sir Samuel Griffith, in introducing the Draft Bill to Constitute the Commonwealth, anticipated the difficulty of disposing of the surplus revenue from Customs, and said—

> "I myself believe that some day the difficulty will be found to be so great that the Federal Parliament and the Parliaments of the different States will come together and make provisions for transferring on a fair basis such obligations of the States to the Commonwealth as will absorb all the Federal revenue."

At the same Convention (Adelaide, 1891), Sir William McMillan said:—

> "To limit the greatest and necessary power of any State, the power of Taxation which lies at the bottom to a certain extent of all government, would be to at once stultify the whole constitution you bring into existence. Notwithstanding the many fears which may possess those representing certain Colonies, it seems to me we are going into this Federation with the hope that the central power will be animated by a sense of justice to the whole of the Colonies, and it would certainly be a step backward,

> and we should at the same time practically stultify the whole of our work if we were to stop short of the sovereign power necessary to the creation of a State. . . . . *It is an absolute necessity that this power should be vested in the Sovereign State irrespective of the consequences.*"

He was supported by Mr. Playford—

> "So far as my reading extends, no Commonwealth in the world has existed, or can exist, without possessing unlimited power of taxation. It is so in the case of the United States, in the case of Canada, and also in the cases of Germany and Switzerland."

14. **States must also Retain Unlimited Power in Respect of Direct Taxes.**—Mr. Deakin was not less emphatic with regard to the power of the Commonwealth and the States alike to tax:

> "I can imagine nothing more calamitous than that such an idea—the idea of taking away the power of taxation at present possessed by the several States—should be adopted by any of the communities that compose Australia. Suppose this clause (51 (2)) is passed, the same unlimited power of taxation as is possessed at the present time by the Colonies will be retained by them in every respect except as regards Duties of Customs and Excise. With regard to direct taxation which we are more particularly discussing, the Colonies will possess in future every power which they now possess. . . . . There is nothing in the clause which will give the Federal taxgatherer priority over the State taxgatherer. . . . . One of the foremost of the duties, that, in fact, which created the Convention, was to provide for the common defence of Australia, and it may be necessary to devote not only the last ship, but the last shilling, to that object. It is impossible to cast the duty of defence on the Government of the Commonwealth without giving them unlimited taxing powers."

15. Though the Convention did not especially provide for, some of its members appear to have had forebodings of, the conflict in the sphere of taxation which has been experienced in other Federated communities, and which, at a later date, impelled the Prime Minister of Canada, Sir Wilfrid Laurier, out of the fullness of his experience, to warn the framers of the Constitution of the South African Union to "avoid the pitfalls of concurrent jurisdiction."

16. These pitfalls could not have been wisely avoided by permanently excluding the Federal Government from any field of taxation, but it was apparently believed and hoped that the Commonwealth would not find it necessary to go outside of Customs for its revenue. This appears to have been generally felt, for it is recorded that one of the reasons for not urging the transfer to the Commonwealth of State Debts, Railways, &c., was the fear that the increased responsibilities thereby created would involve increased Customs duties (as though that were the only field in which the Federal Authorities would operate to secure increased supplies), and so imperil the free-trade leanings of some of the States. So Quick, and Garran, commenting on the proceedings of the Sydney Convention of 1891, write—"To saddle the Commonwealth with the interest on the public debts would practically have meant imposing on the Federal Parliament the duty of raising a large amount *through the Customs*, and would have placed the free-trade party at a disadvantage in Federal politics. It was seen that the amendment touched on dangerous ground, and it was accordingly negatived without division." Practically, Customs duties were regarded as the sufficient source of Commonwealth revenue, and unlimited power to tax was conferred in accordance with the dictates of experience and accepted principles of Statecraft, but in the confident hope that in practice there would be no need for the Commonwealth to exercise the larger power.

17. **Provisional Scheme of the Report.**—The provisional scheme outlined by the Commission, to which passing reference has already been made, is equally unacceptable. During the twilight period of ten years, while the country is preparing for the enactment of the "ultimate and permanent" scheme, there are to be seven uniform machinery Acts in respect of income tax, emanating from seven distinct sovereign and self-determining legislatures. That they are to be at all times uniform implies that seven distinct Parliaments containing thirteen independent Chambers, expressive of the ever-changing phases of public opinion, will have so conquered the confusion of Babel and the strife of tongues that they will all speak simultaneously as one man with one voice and with such compelling force that their tones will reverberate through a decade and be echoed by every succeeding House, without variation, irrespective of whether at any time the dominant party in any State be Conservative or Progressive, Nationalist or Labourite, Federalist or Unificationist, Free-trade or Protectionist. What are the means by which the thirteen Chambers, ever changing and variously constituted, will be simultaneously moved to make identical amendments in the "Uniform Acts" so that uniformity may be maintained and stagnation and discord alike avoided? Is it conceivable that in the domestic and social policy of the States there will be no differences or developments in any State calling for adjustments of the machinery controlling taxation and

fiscal burdens; or, if there be, that every State will feel impelled to move in the same direction at the same time? The provisional scheme as propounded could not exist concurrently with freedom of Parliament, progressive legislation, or ministerial responsibility to the citizens of each State.

18. This decade is spoken of in paragraph 248 as "the experimental period covered by the provisional scheme." "Experimental" in what sense? Not experimental in the sense of testing how the "permanent solution of the problem" is likely to act, for the dominant feature of that epoch is entirely different from that of the interval. For a period of strict delimitation (whatever be the *lines* of the delimitation) a period of voluntary acquiescence in a uniform machinery Act and freedom to each authority to fix its own rates of tax furnishes little or no experimental guidance. That it is advanced as a temporary expedient only may be regarded as proof that its advocates have little confidence in its continued efficiency, a lack of faith which appears justified by its visionary character.

19. **Reasons for Dissent from Recommendations.** Supported as they are by the opinions of publicists of wide experience, profound respect must be felt for the measured pronouncements, including those already quoted, of statesmen whose sagacity laid the foundations of Australia's nationhood. From proposals which are diametrically contrary thereto and contain elements of national danger, there is no alternative but to express dissent. I am not able to support the conclusions and recommendations of my colleagues for these reasons:—

1. The recommendations involve an unjustifiable and dangerous limitation of the power of the Commonwealth to levy taxation.

   Having regard to international relations, there should be no constitutional surrender or withdrawal of the powers possessed by the Commonwealth to levy tax in any sphere at any time. So far only as the Commonwealth may voluntarily or in terms of a terminable agreement decide, it may refrain from exercising them.

2. The recommendations involve a dislocation of State machinery and a serious encroachment upon the powers of the States with paralyzing effects on their activities.

   The States must be free to determine their own domestic policy and control the development of their own internal and social structure without diminution of the powers of taxation conducive thereto.

3. To Commonwealth and States alike any permanent surrender or withdrawal of powers of taxation would lessen the value of the security which bond-holders are entitled to expect should be kept intact, and to either an irrevocable delimitation might be seriously embarrassing if not disastrous.

   The compellable resources to which creditors look as security for payment should not be weakened, but remain unimpaired and readily available for future requirements.

4. The scheme would necessarily restrict the freedom and self-determination of the States, and is therefore inimical to the Federal spirit as distinct from the principle of unification, which the people deliberately rejected in favour of Federation.

   There should be preserved as a perpetual heritage "the indissoluble Federal Commonwealth" by leaving inviolate the domestic self-sufficiency and self-reliance of the States, and of such other States as may in the future be carved out of them, with undiminished power to control their own internal affairs and determine their own domestic policy.

20. **The Sovereign Right of Australian Taxpayers.**—In a general criticism of "the witnesses from whose evidence we have quoted," including leading officers of Commonwealth and State Taxation Departments, the Report, in paragraph 227, reads:—"They do not, however, appear to have paid sufficient regard to what, in our opinion, is the main consideration which should govern reasoning upon the subject and to which all other considerations must be adjusted. That consideration is the sovereign right of Australian taxpayers to have the mechanism of taxation so designed and controlled as to impose the minimum of inconvenience and involve the minimum of cost," a criticism and a principle which will probably receive general indorsement.

21. Conference after conference has been held at intervals without evolving a satisfactory solution of a problem which has become more pressing and irksome, and the reports of these conferences cannot be read without creating a feeling that some of the representatives appear to have been swayed too much by parochial jealousy and regard for security of office, and showed a lack of detachment and of devotion to the pursuit of a great purpose. The way was not found because there was no dogged determination to find and pursue it, even at the cost of personal loss

or inconvenience. Viewing the failure of these efforts, one recalls the forcible exposure by Mill of the evils which show themselves in bureaucracy as in autocracy—"It is no less important in a democratic than in any other Government that all tendency on the part of public authorities to stretch their interference and assume a power of any sort that can readily be dispensed with should be regarded with unremitting jealousy. Perhaps this is even more important in a democratic than in any other form of political society."

That both Commonwealth and State have heavy responsibilities and should have correspondingly extensive powers will not be disputed, and for the existence and continuance of both central and State Governments there are useful and quite distinct spheres. Viscount Bryce, in *The American Commonwealth* (page 33), describes the position in that Federation in words that would be equally applicable to Australia:—

> "The administrative, legislative, and judicial functions for which the Federal Constitution provides are those relating to matters which must be deemed common to the whole nation, either because all the parts of the nation are alike interested in them or because it is only by the nation as a whole that they can be satisfactorily undertaken."

and he adds—

> "It is as much the duty of the States' Authorities to watch over the rights reserved to them as of the Commonwealth to exercise the powers delegated."

Among the rights reserved to the Australian States is the power of taxation limited only by the exclusion of Customs and Excise. In this respect the Federal compact is comparable with the Constitution of the Dominion of Canada, which (section 91) gives the Federal House of Commons "exclusive authority for the raising of money by any mode or system of taxation," and also provides (section 92) that each Province may "exclusively make laws for direct taxation within the Province in order to the raising of a revenue for provincial purposes."

22. **The Cause of the Trouble.**—The possession of unlimited powers of direct taxation by both Commonwealth and States (minor restrictions expressed or implied in the Constitution are not overlooked) did not create difficulty during the first decade or more of Federation. Clearly the **possession** of power necessary for national defence and domestic development is not itself injurious. So long as the power of the Commonwealth to enter into "the direct taxation business" lay dormant there was no inconvenience and no outcry. Complaint began when, the States being already in the field, the Commonwealth commenced to exercise its powers in the same arena. In searching for a remedy the first concern is to locate the cause of the trouble. The cause in this case is not in the **possession** of powers, but in the **exercise** of powers concurrently by Commonwealth and States, in that two independent and (in regard to direct taxation) sovereign authorities are arbitrarily exercising their powers directly in the same field, at the same time, "demanding revenue from the same people, by the same modes of taxation," and the trouble would be almost as great if the powers were exercised co-operatively instead of independently, as at present. Doubtless the public irritation and loss caused by the simultaneous exercise of their powers by both authorities would be relieved by partially or wholly dispossessing one or other of them of these powers—by, for example, the delimitation recommended by the Commission—as a headache may be cured by decapitation. The cure may be worse than the trouble, and permanent delimitation of spheres as prescribed in the Commission's Report might prove a remedy worse than the existing evil.

23. **Remedy.**—Accepting as axiomatic that Commonwealth and States alike must possess in full potency the powers of direct taxation they now possess, a practical remedy may be sought in such a voluntary suspension of the exercise of these powers by one or both as may restore the comparative contentment of the *status quo ante bellum* to which the harassed taxpayer looks back longingly. If it be practicable, and such matters must be tested by reference to their practical consequences, there need not be any sense of subordination of one authority to another. It is the prerogative of power to assert itself or to restrain itself, to act or to refrain from acting, and, if less demonstrative, it may be more effective in masterly inactivity than in action. The possession of power does not necessarily imply its exercise, and a test of statesmanship is not in the creating of power so much as in the controlling of a power already created. If there be reason why in the public interest one or both authorities should cease to operate in the field of direct taxation, convention, prejudice, or narrower interests should not be allowed to stand in the way.

24. I respectfully submit that the solution of the difficulty created by the operations of independent authorities possessing concurrent jurisdiction will be found not in any delimitation of powers or any irrevocable abdication of rights, but in some method of passive or active alliance. Can a scheme be devised which, while maintaining inviolate the powers of taxation possessed by both Commonwealth and States, and without invading any necessary constitutional power, will secure the revenue required by both, with efficiency, simplicity, economy and convenience to the taxpayers?

25. **Methods Tried or Suggested** include the following :

(1) A scheme in which the perfect independence and sovereignty of both Commonwealth and State were exhibited is that under which each authority in accordance with its own laws and methods and without regard to the actions of the other collects tax in such form as it determines. Under this scheme the taxpayer has been ground as between the upper and the nether millstones, and because of this, combined with its costly administration, its perplexity, its irritating duplication, and purposeless expense it is after several years' trial generally condemned.

(2) A second method is being tried in Western Australia of appointing one authority the collector for the other, under laws which may differ in many respects from one another and on differing scales of tax. Details of the method are fully set out in the Commission's Report. It involves some interference with the sovereignty and independence of the State, though the Commonwealth and State laws and rates continue as elsewhere to operate side by side ; it also involves a minimum of advantage for the taxpayer, who has still to acquaint himself with two distinct machinery Acts and the legal interpretations of both, and two distinct scales of rates, has still to prepare two sets of returns (albeit they be written on the same sheet of paper), has to check two assessments, nothing simplified by their being printed on one sheet of paper, has to decide whether he shall accept or dispute either or both and eventually has to pay both simultaneously, instead of at separate dates one conveniently distant from the other. After full inquiry and studying the opinions of experienced administrators, your Commissioners strongly disapprove this method and unanimously recommend against its continuance or extension.

(3) A method has been proposed by the Commissioner of Taxes in the State of Victoria and is fully explained and criticised in the Report of the Board of Inquiry issued on 23rd February, 1921. It proposes the appointment of a Board of Control of five members, two being taxation officers of the Commonwealth, two taxation officers selected from the States, and a Chairman who would "represent the general taxpayer." This Board was to take over control of both Commonwealth and State taxation staffs, by whom the several taxing Acts of the Commonwealth and the States would be administered, by reserving to both the right to amend their Acts and vary their rates from time to time. In addition to minor objections which are voiced in the Majority Report of the Board of Inquiry, this scheme "leaves Commonwealth and State authorities both demanding revenue from the same people by the same mode of taxation which can at best be only an imperfect remedy for the existing disabilities."

(4) A fourth method partakes of the nature of a partnership agreement : the provisional scheme recommended in the Report, and which is in my opinion unworkable and visionary.

26. In each of these there is an element which foredooms it to failure as a satisfactory solution : it attempts to establish simplicity while maintaining duplicity. The inherent fault in all these schemes is absent from the "ultimate and permanent solution" recommended by the Commission in which is recognised and clearly expressed the necessity for simplicity—for delimitation of spheres, reserving each to one authority only—a scheme which, however, offends seriously in another respect in that it involves a dangerous dispossession of powers as well as a constitutional delimination of spheres of control, a dispossession and a delimitation which are neither prudent nor necessary.

27. **Other Preferable Propositions.**—There are at least three methods by which with promise of varying degrees of success the problem submitted to us can be solved and simplicity, economy and convenience in administration be reached without involving a permanent delimitation of spheres or the dispossessing of any authority of the powers of taxation now possessed. The Commonwealth and the States each acting as independent self-determining authorities can, not by abdication, but in the full panoply of the powers they possess, enter into agreements for a term subject to stipulated conditions, and to summary termination in certain events, whereby—

(1) The Commonwealth may exercise the power of taxation in respect of certain direct taxes, and, while it does so, the States may exercise the power of taxation in respect of all other forms of direct taxation, but shall refrain from operating in the field reserved under the agreement to the Commonwealth ; or

(2) The States may refrain from exercising their powers of taxation and entrust the whole of the collecting of taxes to the Commonwealth, the latter to pay over to the States such sums computed on a uniform basis as the States may from time to time require ; or

(3) The Commonwealth may refrain from exercising its powers of direct taxation in any or all of the States so long as the latter pay over to the Commonwealth such sums computed on a uniform basis as the Commonwealth may from time to time require ; or

(4) Theoretically there is a fourth—that direct tax be not collected by any authority. It need not detain us.

28. One of these resembles in a measure the "ultimate and permanent solution recommended in the Report, but with all three there is the important difference that none of them will permanently deprive either of the authorities of the powers of taxation now possessed : they each provide for voluntary passivity, partial or total, which may if occasion require be terminated. The unrestricted "power to make laws with respect to taxation" remains in full efficiency : Parliament may for sound reasons refrain for the time being from exercising them, but can do so immediately occasion justifies.

29. The recommendation of the Report that the power to impose income tax be exclusively vested in the Commonwealth involves a radical renunciation by the States which, when once availed of by the Commonwealth, could only, it is thought, be reversed by an alteration of the Constitution : grave doubt has been expressed whether the Commonwealth can renounce any rights, original or transferred, it may possess to collect land or any other direct tax, and, if effect is to be given to such an intention, an alteration may be necessary in the Constitution. The National Charter should be tampered with as seldom as possible, and only when the object desired is of paramount importance and of permanent value, and when no arrangement can be satisfactorily made consonant with the Constitution as it stands.

30. The recommendation if carried into effect cannot but inscribe in the Constitution a restriction, which, unsound now, may be pernicious in future years when financial requirements may have substantially changed.

31. Attention has already been directed to reasons why the States should retain undiminished their present powers of taxation. To quote Burke—"The revenue of the State is the State. In effect all depends upon it whether for support or for reformation." To the States especially the collection of direct taxes is vital, for they are expressly excluded from imposing Custom and Excise duties.

32. Assuming then that the true solution must respect existing powers and can be found not in deprivation of function but in deferring the exercise of the function by one or both authorities, let us examine briefly the three possible practicable methods already named.

The First.—The Commonwealth to exercise exclusively the right of taxation in respect of certain direct taxes, say, income tax, the States collecting others, say, land, estate, and entertainment taxes. There will follow :—

Simplicity : Only one authority will operate in each area in respect of each class of tax.

Convenience : Only one set of Acts would have to be studied and followed and only one set of tax returns compiled and lodged.

Economy : There will be a saving both in the cost of administration and in the cost to taxpayers compared with the present duplication inseparable from the two authorities operating in each sphere in respect of similar taxes.

But as compared with the cost if **all** direct taxes were collected by one authority (and subsequently allocated between Commonwealth and States as may be arranged) there is in this method considerable preventable waste. It implies the maintenance of two distinct taxing staffs in every State, the Commonwealth's and the State's, with inability to transfer officers temporarily to cope with a special rush or permanently from one sphere to another for which they may be better equipped.

Certainty : It is now found that the handling of returns under the Estate Duty Act in the same office in which the income tax returns of the deceased were handled has led to the detection of evasion in the returns lodged by the testator and the recovery of the evaded tax. Reference to the land tax records facilitates the checking of estate statements. An apportionment of the direct taxes in the manner proposed in the Report will hamper the treatment on both sides. The entertainment tax is quite separate from the others, but the collection here is simple, and amounts practically to an audit of the accounts of entertainment promoters.

33. Not only so, but the first method implies the unanimous agreement of six separate legislatures as to what taxes shall be dealt with by either party and on what terms, and universal harmony as to the details of an intricate agreement not only at its inception but during its continuance and on renewal. The States must be unanimous in refraining entirely from imposing taxation of the classes entrusted to the Commonwealth—if any of them interferes or attempts to control the collection the method mentioned in para. 25 would really be substituted, and instead of the Commonwealth acting as the sole and only administrative collector it would become one of two collectors or merely the agent of the controlling State, collecting two taxes, one for itself as principal the other as agent for the State.

34. Seeing the States under this method refrain from collecting, say, income tax (as they do not now collect Customs or Excise duties), all State taxing Acts would for the time lie dormant and collections would be made under provisions of the Federal Act alone, which in accordance with the Constitution cannot discriminate between States or parts of States. (This provision of the Constitution is so essential that, notwithstanding American precedent, one cannot entertain any idea of altering it.) Consequently the machinery and rating Acts would have to operate uniformly throughout Australia, and the States, each keenly alive to its own interests, would insist that the payments to them be on a uniform basis similar to the grant now paid them out of Customs duties. To provide for suitable distribution to cover the necessities of all the States the Commonwealth would require to regulate its rates and collections to provide a sum sufficient to meet the requirements of the most needy State, and, since the distribution to all States must be on the same basis, the amounts paid to other States would be in excess of their requirements—conducive to waste and extravagance and causing the extraction from the pockets of the people of more than otherwise would be necessary for maintenance of the public service.

35. Take income tax, the most important and most productive of the direct taxes, as a typical instance, including in it dividend duty which is a species of income tax. The total State collections and rates per head for 1919-1920, the latest year for which records are available, were as under:—

State.	Population.	Total Sums Collected as Income Tax (and Dividend Duties).	Amounts per Head.
		£	£ s. d.
New South Wales	2,091,115	2,308,267	1 2 1
Victoria	1,528,151	915,551	0 12 0
Queensland	752,245	2,023,316	2 13 10
South Australia	491,177	662,381	1 7 0
Western Australia	330,819	416,136	1 5 2
Tasmania	212,847	279,476	1 6 3
All States	5,406,351	6,605,130	1 4 5

If to cover the requirements of Queensland the Commonwealth were to collect and distribute to the States at the rate per head ruling in that State the total so collected and distributed would be much in excess of total needs, thus:—

A. State.	B. Present (1919-1920) Collection.	C. Population.	D. Amount which would be Distributed at £2 13s. 10d. per Head.	E. Excess of D over B.
	£		£	£
New South Wales	2,308,267	2,091,115	5,624,489	3,316,222
Victoria	915,551	1,528,151	4,110,282	3,194,731
Queensland	2,023,316	752,245	2,023,316	..
South Australia	662,384	491,177	1,321,122	658,738
Western Australia	416,136	330,819	889,807	473,671
Tasmania	279,476	212,847	572,496	283,020
All States	6,605,130	5,406,354	14,541,512	7,936,382

That is, the only operative taxing Act imposing one general scale of rates would, to meet Queensland's needs, have to collect and distribute to the other States nearly £8,000,000 more than is at present being collected by them from this source. A remedy would be to restrict the distribution to, say, the average, 24s. 5d. a head, but this would only compel Queensland, precluded from collecting income tax, to unwillingly levy some other tax to make up the shortage.

36. If the Commonwealth retain for its own purposes all the income tax, the States will be seriously restricted and compelled by the necessity which knows no law to take measures regarded as objectionable in order to secure indispensable revenue, or it will result in the financial strangulation of the States.

37. The method, however practicable financially, would involve interference with the self determination and autonomy of the States, which, because of the insufficient or overabundant distributions, might have to alter other State taxes in a way in which they unfettered would not do. They might be compelled to greatly increase, for example, the land tax—a class levy—though it might not be generally approved of by the citizens of the State, or they might be driven to impose prohibitive licences on certain industries so that same may become a revenue-producing monopoly of the State, as for example the manufacture of sugar in Germany or tobacco and matches in France. This would involve intolerable interference with the freedom of the States in the management of their own domestic affairs.

38. The method would still require the maintenance of State taxing staffs to collect land and other direct taxes, unless the collection of **all** direct taxes were undertaken by the Commonwealth. So long as the Commonwealth and the States maintain separate Departments collecting direct taxes there will be duplication and preventable waste and lessened efficiency; while if carried out under one organization, be it Commonwealth or State, co-ordination and the use of returns under one Act to check those under another tend to increased efficiency and reduced cost.

39. These objections, in addition to others, are inherent in the "ultimate and permanent solution" recommended in the Report.

40. This scheme stands condemned in my judgment because of the injurious influence on the stability and independence of the States, apart from the fact that duplication of direct taxing staffs involves an unnecessary drain upon the public purse and an intolerable burden on the taxpayer. The objection as to cost could be overcome if the collection of all direct taxes were intrusted to one authority, Commonwealth or State, under an arrangement whereby the non-active receives such share as may be arranged.

41. **The Second and Third Methods,** like the first, do not involve delimitation of powers. Each authority retains in all their plenary fulness the powers it now possesses—in the one active and operative, in the other passive, stored up potentially ready to burst into activity if and when occasion arises. The two may be considered together: in essence they are similar. In one the State, in the other the Commonwealth, administers under its own Acts, collects and under agreement pays to the other such sum as may from time to time be arranged.

42. Either method will introduce a larger measure of simplicity and convenience than under the first method, indeed the greatest possible measure, for in each State the taxpayer has now to deal with only one taxing authority administering one set of Acts, and the complexities attendant on duplication vanish.

43. Economy in administration can also be accomplished. Little or no additional expense would be incurred by the Commonwealth if it collected under its own Acts its own and the States' needs, and little or no additional expense would be incurred by the States if they collected under their own Acts their own and their shares of the Commonwealth's needs. The rates (being in effect a combination of Commonwealth and State rates) would be greater than either taken singly, and the Commissioner of Taxation has informed us that the doubling of the rates by any Government would have the effect of halving the percentage cost. In this connexion comparison of the costs of collecting Commonwealth and State direct taxes for the latest year on record is instructive and examination of the table will help to form an estimate of the probable saving in expense under either method.

Cost of Collecting Commonwealth and State Revenue from Taxation, 1920-1921.

Government.	Population.	Total Direct Taxation.	Total Cost.	Percentage of Collection.	Per Capita.
		£	£		s. d.
New South Wales	2,101,384	7,388,133	52,631	0·71	0 6·01
Victoria	1,535,938	3,846,833	63,102	1·64	0 9·86
Queensland	768,964	3,682,642	56,084	1·52	1 5·50
South Australia	497,525	1,622,076	38,176	2·35	1 6·42
Western Australia	333,117	955,359	33,872	3·55	2 0·40
Tasmania	211,984	708,603	16,412	2·32	1 6·58
All States	5,448,912	18,203,646	260,277	1·43	0 11·46
Commonwealth	5,455,423*	20,617,515	513,422	2·49	1 10·59
Commonwealth and States ..	5,455,423	38,821,161	773,699	1·99	2 10·04

* Population includes Northern Territory, 3,928; Federal Territory, 2,588. For further details see Appendix 5.

The total collections of the States and of the Commonwealth are about equal, and if the doubling of the total amount collected by any Government would have the effect of halving the percentage cost these figures indicate that collection of the whole by the present staffs of the States would result in an annual saving of half-a-million pounds, while collection by the Commonwealth solely would effect an annual saving of quarter of a million pounds. The expense to which taxpayers are at present put would also be greatly reduced.

44. While either method will achieve simplicity, convenience, and in greater or less degree economy in expense of administration, there are substantial practical differences between them.

45. **Collection by Commonwealth.** (1) If the collection of all direct taxes be undertaken by the Commonwealth under its own Acts (the second method), the States will be entirely dependent on the Commonwealth machinery for their requirements, seeing they are already precluded from collecting Customs and Excise duties. The power of the purse is weighted very heavily to one side. If, on the other hand, the Commonwealth collect under the State Acts as agent for the States, as is being tried in Western Australia, the evils of duplicity are revived. These have been exposed both in the Report and in this reservation.

(2) The Commonwealth must collect on conditions and at rates uniform throughout Australia, it cannot adapt itself to local conditions, and it would also have to distribute to the States on a uniform basis irrespective of their individual needs. If any attempt were made to cut down the amount equitably payable to any State, or what would be equivalent to the same thing supplement it in some cases, there would be general discontent; not only would the development of the country be checked, but the jealousy and bitterness engendered would undermine the national life. The Commonwealth must be either the dispenser of patronage—an intolerable position—or must collect and distribute without discrimination. This would involve unjust and unwise treatment of a State not yet developed or sparsely settled, as compared with a State more fully developed and with denser population.

(3) Again, as the above table shows, the cost of collecting direct taxes varies greatly in different States, not because of differences in the efficiency of the methods in use, but because of differences in general conditions; for example, in one State the cost may be low because there is a greater volume of business accounts to be dealt with than in another; in one State the expensive assessments of primary producers will exceed those of another State, with corresponding increase in the percentage cost. If the Commonwealth be the collector and distributor of the direct taxes, certain States would be benefited in this regard to the disadvantage of others.

46. **Collection by States.**—These objections are absent if the States control and collect (the third method). If the collection of all direct taxes be undertaken by the several States, each operating in its own sphere, the burden of the taxes can be adjusted to exactly meet the requirements of that State plus the contribution calculated on a uniform basis to be passed on to the Commonwealth.

47. The State desiring to push on with developmental work can do so financially independent of the activity or inactivity of other States, and the State in which for any reason the collection of tax is more costly than in another will itself reap the reward or bear the expense of its more searching or less efficient methods.

48. Opposition to this method may be expected from unificationists and those who subordinate public weal to personal interest; but appeal can, I think, be made to the larger body of citizens removed from official strife for pre-eminence who are concerned solely in the establishment of an effective, economical, convenient, and adequate system compatible with safeguarding the most vital interests of the Commonwealth, who without impairing the powers and efficiency of the Commonwealth desire to have the "mechanism of taxation so designed and controlled as to impose the minimum of inconvenience and involve the minimum of cost."

49. **Incidence of Taxation.**—There has not been advanced by any witness nor has there been found in any of the evidence and discussions of the many conferences which have been held any convincing reason why the Commonwealth should "remain in the direct taxation business." The halting and doubly conditioned opinion of paragraph 232 of the Report—"We consider it a sound principle that where any authority is, by right and not by grace, directly or indirectly receiving revenue raised through taxation imposed upon its citizens that authority should, wherever possible, be charged with the responsibility of determining the nature and incidence of the taxation"—is not supported by the experience of administrators or the investigations of students, who find ever increasing difficulty in determining the incidence of any tax. The first impact is easily discerned, but by diffusion and shifting the final incidence may either elude detection or fall on persons and in manner very different from those intended. Taxation as a weapon of social

adjustment often proves to be a boomerang. As Professor Hamilton has it—"The payers of taxes are quite distinct from the bearers of taxes." Thus Professor Shield Nicholson concludes a discussion of "the Social Function of Taxation" with an indorsement of the opinions of Professor Bastable (*Principles of Political Economy*, Vol. III., page 284):—

> "On the general question the summary of Professor Bastable seems temperate and well founded. 'The results of financial experience are of some value in respect to the use of taxation for other than fiscal purposes. The taxing power has often been employed to encourage industry, to improve taste, to benefit health, or to elevate morals, but in none of these applications has the desired success been obtained. There is, therefore, a presumption against its use in remedying the inequalities of wealth. **Its definite and universally recognised function is the supply of adequate funds for the public services. To mix up with one very important object another different, and perhaps incompatible one, is to run the risk of failing in both. . . .** If the socialistic *régime* is the goal to be aimed at, there are more direct and more effective modes open than the manipulation of taxation.'"

50. A view with which Professor Seligman is also in agreement (*Essays in Taxation*, page 341).

> "We see, therefore, that the chief development of the last quarter of a century, in the practice as well as in the theory of taxation, has been increasing emphasis laid upon the social [as distinct from the individual] point of view. In a great domain of taxation, as we have just learned, the individual point of view has been completely superseded by the social point of view, and the study of the incidence and effects of taxation has emphasized to a continually greater extent the fact that the individual who pays a tax is by no means always the person who bears the tax."

51. The only taxes which were, by exclusion of the States, specially reserved by the Constitution to the Commonwealth have in a marked degree a distinguishing characteristic: they are never expected to rest where they first fall. Customs and Excise duties, whatever be their impact, are shifted, and are expected to be shifted. Potent as are the influences of these duties in the life and the foreign and commercial relations of the people, it is beyond the power of the taxing authority to fix their final incidence. If the Federal Authority be unable to determine the distribution or final burden of the Customs and Excise duties, which are the principal source of its revenues, what essential necessity is there why it should control the final and individual incidence of the other? By what school of economists has the "principle" enunciated in paragraph 232 of the Report, coined for the occasion, been supported? Why was it flagrantly broken (if it ever existed) in the Constitution which, while it secured to the States 75 per cent. of the Customs and Excise duties, deprived them of any decisive voice in "determining the nature and incidence" of the duties? The States "had the predominant interest in the proceeds of the duties," but they were expressly prevented from exercising any direct control.

52. The Board of Inquiry appointed to inquire into and report upon the best means of giving effect to the principle of (*a*) one tax-gathering authority for the Commonwealth and the States, and (*b*) one form of return, considered it as fundamental that "any scheme for the collection of taxes by one authority should preserve to the respective Governments inviolate and without surrender all their existing rights in respect to administration and control," by which, as their later deliverances show, was meant **the preservation of these rights in full exercise and active energy.** This involves an encroachment on the powers conferred by the Constitution. It implies that the authorities, both Commonwealth and State, are **required** to exercise the powers of levying direct tax, whereas both are perfectly free to refrain from imposing any direct taxation, and are equally free to impose direct taxes in such way and through such active agencies as they may each determine. One might, from the terms of its deliverance, conclude that its members conceived the real purpose of the Board to be to devise some means of conserving the interests and maintaining the status of two taxing Departments, instead of the paramount interests of the people of Australia. What the Board deemed fundamental was not the economical and efficient service of the people, nor the framing of a scheme which would give acceptable expression to the provision of the Constitution conferring on the Commonwealth "the power to make laws in respect of taxation," but the continuance of conditions, which, if fundamental necessarily limit the powers reserved by the Constitution to the respective authorities. But, in fact continuance of these conditions is not fundamental. The resolution of the Board continues—All other rights such as legislation as to the character of taxation Acts and rates of tax are already preserved fully by legislative enactment," from which it is clear the Board attempts to superimpose on these all other rights," and to treat as fundamental, "rights" which are neither essential nor fundamental, and it ignores another right, namely, the right to refrain entirely from exercising the power to make laws in respect of taxation. There is no constitutional compulsion on either Commonwealth

or States—apart from consideration for the welfare and interests of the people and maintenance of the public services to levy any direct taxes, and both would doubtless desist from doing so if sufficient revenue were received from other sources. To this power of abstention the Board failed to give any practical recognition.

53. The unlimited power of taxation conferred on the Federal authorities is not confined to income tax or estate duties or entertainment tax, but extends to **all** taxes; it includes the power of collection, administration, and control of, for instance, local rates all over the Commonwealth, for, as Bastable writes, "all contributions to the various organs of government are taxes. A rate raised by the smallest parish is as much a tax as if it were levied by the Imperial Government." By virtue of the powers conferred upon it by the Constitution, the Commonwealth has as much right to enter upon the control of these as upon the control of income tax or any other tax. Does the Commonwealth take any voice "in determining the rates, the mode of collection, or the nature or incidence" of these rates? Is there any reason why it should? Is there any cogent reason why it should endeavour to control taxation which can be most effectively and discriminatingly controlled by the States themselves?

54. The claim that the levying of income tax would be more appropriate to the Commonwealth than to the States, if advanced as a general rule, must be challenged. The claim may be conceded in part so far as it applies to the businesses of companies or individual owners which are carried on in more than one State, but it cannot be sustained in respect of taxpayers whose operations are confined to one State. In Australia the individual taxpayers under the Federal Income Tax Act whose operations extended to more than one State numbered in 1918–1919 8,212, being less than 2 per cent of the whole (430,542); the operations of fully 98 per cent. were confined to one State. In Continental countries and in Great Britain extensive use is made of local agencies in the assessing and collecting of tax. In Great Britain, where there are larger and more numerous multiple branch companies and business concerns operating all over the kingdom than any known in Australia, the country is divided into 725 separate districts, and 725 distinct bodies, comprising 5,600 local commissioners, are engaged in the income tax administration required "to take the necessary steps for putting the Income Tax Acts into force as regards each parish within their respective districts." This extreme decentralization, because of the intimate local knowledge it provides, is a powerful check on tax evasion.

It has been objected that if Income Tax, Land Tax, or Probate Duties, or indeed any tax in which the subject-matter all over Australia is cumulative, and the rates steeply graduated under Federal Acts, were collected by the individual States under State Acts the aggregation and the graduated rates of the Commonwealth would not apply. Naturally, but the States would still be at liberty, so long as they pay their proper quota to the Commonwealth, to collect from their own citizens such direct taxes under such conditions and at such rates as they individually determine, and there is no valid reason why the self-determination of any State as to the method and manner of its collections should be dictated by any body other than the electors, who through their own representatives in the State Parliament direct the affairs of the State.

55. **Conclusion.**—From an extensive and close study of the subject these facts and principles emerge:—

(1) The direct taxes at present collected in the several States and those collected by the Commonwealth—income, land, entertainment taxes, probate, succession, estate, and dividend duties—could be handled more efficiently and more economically if all were controlled by one authority collecting under one Act for each object of tax in each area in which they operate.

(2) That no system which maintains in full operation more than one Act in respect of one object of taxation will quite overcome the expense, irritation, inconvenience, and perplexity of the present duplex system of two authorities operating in the same sphere.

(3) That either the Commonwealth throughout the whole of Australia or the several States each in its respective sphere should be employed to act as sole collector for a term to be fixed by agreement subject to such payment to the inactive authority as may be arranged and to determination on short notice if adequate reasons for same arise.

(4) Owing to the diverse conditions obtaining over the extensive area governed by the Federal Parliament and the necessity for adjusting taxation to meet the varying needs of the several States (and the States which may in time be formed or the parts which may be surrendered to the Commonwealth) the Commonwealth, compelled if it exercises the power of taxation at all to exercise it so as not to discriminate between States, or parts of States, is unable to adapt itself to the particular circumstances of all parts of the Commonwealth.

(5) That the States not being so hampered and having more intimate knowledge of their own special needs are better equipped to administer and control the collection of direct taxes.

(6) Its claims being paramount, the Commonwealth should have unfettered right to determine what amount per head of the population (or other basal unit) uniform throughout Australia should be paid over by the States to it during each fiscal period.

56. Whether the method recommended in this reservation can be adopted and fully dealt with by agreements between the Commonwealth and the States or its adoption would require amendment of the Constitution or some other enabling Acts, I cannot discuss. Without elaborating details, **I therefore respectfully recommend**—

(1) That the Commonwealth and the States mutually agree that the latter each in its own area shall exclusively exercise the power of collecting direct taxes from its taxpayers in such manner and under such Acts as it may determine—

(*a*) the agreement to be terminable on stipulated notice by either party;

(*b*) during the continuance and for months after notice of termination has been given the State shall pay to the Commonwealth in (? monthly or other) instalments such an amount per head of the population of the State as may be required by the Commonwealth, such amount per head to be uniform throughout Australia and notified to the States not later than a definite date in each year;

(*c*) such monthly amounts to be paid to the Commonwealth out of tax collections before any of such collections for the month are transferred to State spending Departments. Interest on State debts to have priority over all other claims.

(2) That adequate means be taken to establish the right of the Commonwealth in case of need to intervene, and, if necessary, itself collect the tax if any State fail in its payments.

JOHN JOLLY.

TAXATION AT THE SOURCE.

RESERVATION.

We regret we are unable to concur in the principal recommendation expressed in the Report on the above subject.

1. **Definition of Terms.**—In this Reservation the term "Taxation at the Source" will be used in the same sense as in the Report—that is, as meaning a method similar to that in force in Great Britain, which as applied to companies requires payment by a company of tax on the whole of its profits at a flat rate. As to the amount distributed in dividends, the method provides also—

(*a*) For refunds to shareholders whose income, including the dividend, is below the exempted amount;
(*b*) For rebates to those whose personal rate of tax is less than the Company rate; and
(*c*) For additional payment by shareholders whose rate is higher than the Company rate.

The British method is described with more detail in Paragraph 273 of the Report. The term "Company Taxation" is also used as in the Report. (See also Paragraph 4 of this Reservation.)

2. **Origin of Taxation at the Source.**—The British Income Tax Act of 1803 introduced the method of Taxation at the Source, which has remained an important element in the British system up to the present day. In the year 1801–2, before the method of Taxation at the Source was introduced, the British Income Tax at 24d. per £1 produced £5,301,000. In the following year no Income Tax was in force. In 1803–4, when Taxation at the Source came into operation, the tax at 12d. per £1 produced £4,862,000. Before its introduction each penny of tax produced £221,000 After its introduction each penny of tax produced £405,000. Commenting upon this, Professor Seligman, in his work "The Income Tax," published in 1914, writes:—

> "In other words, the alteration in the principle of assessment at one blow doubled the efficiency of the tax. No more signal proof could be afforded of the vital importance of good administrative methods in fiscal administration."

While there have been some changes in the classes of income to which that method of tax collection has been applied, those changes have been in the direction of addition. The principal classes of income upon which tax is now collected by deduction at the source in Great Britain are enumerated in Paragraph 257 of the Report.

3. **Recent Inquiries into Taxation at the Source.**—In 1905 a Departmental Committee, and in 1906 a Select Committee of the House of Commons, were appointed to inquire into and report upon various phases of the Income Tax, and in each case the Committee considered, among other things, the method of Taxation at the Source, and recommended its continuance. The British Royal Commission on the Income Tax, which reported in 1920, stated that—

> "Taxation by deduction at the source is of paramount importance, lying as it does at the very root of our Income Tax system. . . . We are convinced that to abandon Taxation at the Source now would involve an enormous loss of revenue, and would throw upon scrupulous, honest, and careful taxpayers an unfair share of the burden imposed by the taxation necessary for the country's needs. We are not satisfied that any system of 'Information at the Source' would be a practical and efficient substitute for the present system, and it would be a source of trouble and irritation to the community in general."

4. **Commonwealth Practice.**—The Commonwealth Income Tax Law does not embody the method of Taxation at the Source, as above defined, **so far as dividends distributed from the profits of the immediately preceding year are concerned.** In all such cases the Company remains untaxed to the extent of the distribution, but the shareholder is required to show the dividends in his Income Tax return, and is charged tax at the rate appropriate to his total taxable income. Under the Commonwealth Law, there is, however, a somewhat anomalous method in force with regard to taxation of dividends derived from profits which in earlier years had been carried to Reserve or similar account in the Balance-sheet of the year in which they were made, but are distributed in subsequent years. The Commonwealth method of dealing with dividends wholly or partly paid from such undistributed profits cannot be described either as "Taxation at the Source" or as Company Taxation. It is rather a mixture of both. For example, if "undistributed profits" are in a subsequent year paid to shareholders by way of dividend, the position of the shareholder in respect of the tax which had been paid by the Company varies according to the rate of tax applicable to his personal income. Four positions arise:—

(*a*) If the shareholder's income, including the dividend in question, is less than the General Exemption—*i.e.*, if he is not a taxpayer in that year—he will receive no refund, although the Company rate (now 2s. 8d.) has been paid by the Company upon the profits of which he has now received a share by way of dividend.

(*b*) If the shareholder is a taxpayer, but his personal rate is lower than the Company rate, he will receive a refund or rebate, not of the whole amount paid by the Company, but of a proportion calculated by applying his personal rate of tax to the amount of dividend received—that is, assuming 2s. 8d. was paid by the Company, and the shareholder's rate is 1s., he will receive refund or rebate at the rate of 1s. on the dividend, and the balance of the tax will be retained in the consolidated revenue.

(*c*) If the shareholder's personal rate of tax is exactly the same as the rate originally paid by the Company, he will receive refund or rebate of the full amount.

(*d*) If the shareholder's rate is higher than the rate originally paid by the Company, he will be called upon to pay tax on the dividend at a rate equivalent to the difference.

It will be seen that, in case "*a*" above, the Commonwealth method in respect of taxation on dividends derived from "undistributed profits" is one of "Company Taxation." In respect of case "*b*", it is a mixed method, partaking of the character of Taxation at the Source and of Company Taxation. Cases "*c*" and "*d*" may be regarded as instances of Taxation at the Source.

5. **States' Practice.**—The practice of the Australian States is described in paragraphs 254 and 255 of the Report. In all the States the method in force is correctly described as "Company Taxation," since taxpayers are not required to include the dividends received in their Income Tax returns, and, while, except in Western Australia, refunds are not allowed to shareholders whose personal rate of tax is lower than that imposed upon the Company, those shareholders whose personal rate of tax is higher than the Company rate are not called upon to pay the difference. The practice of the States has the advantage of ease, certainty, and economy in collection, but **on the ground of equity not one word can be said in its favour.** It relieves of tax those taxpayers whose personal rates are higher than the Company rate; in effect imposes taxation at a relatively high rate on a large body of shareholders who would otherwise not be taxable, and adds to the taxation of another large body of shareholders who, though taxpayers, are liable only to a lower rate of tax than the Company rate.

	1,377,558
	£3,044,085

ion that a deduction of 15 per cent.

6. **Opinions of Witnesses Unofficial Witnesses.** Among professional and commercial witnesses, the advisability or otherwise of incorporating in the Commonwealth system of Income Taxation the method of Company Taxation practised under State Acts, or of Taxation at the Source, as in force in Great Britain, was thoroughly discussed. A strong preference was expressed by some witnesses for the State method, which deals with the Company only, and those witnesses commended that method on the grounds of its simplicity and economy, which they considered sufficient to outweigh the obvious inequity of the system with regard to shareholders whose total income is below the general exemption, or whose rate is below the Company rate. Those witnesses were all familiar with one or other of the State Statutes, and their opinion as to the method which should be adopted was perhaps influenced by the fact that in the States the Company rate is low as compared with that of the Commonwealth. A number of the witnesses who urged this view were acquainted with the British system also, and, while considering certainty of yield of the tax to be the paramount consideration, they were unwilling on the ground of expense to urge the adoption of a method involving refunds, as allowed in Britain. Many other witnesses, however, were so seriously impressed with the injustice done by a method which allows no refunds or rebates to shareholders having small incomes that they were led to recommend reliance upon the Commonwealth practice with regard to dividends based upon current profits, or upon the method of Taxation at the Source, which makes the Company merely the agent to pay tax in the first instance, leaving the shareholder to claim any refund or rebate to which he may be entitled.

7. **Official Witnesses The Commonwealth Commissioner.** With regard to the anomalies above pointed out (paragraph 4) in respect of the Commonwealth taxation of dividends derived wholly or in part from undistributed profits, the Commonwealth Commissioner of Taxation was of opinion that the Act should be amended, in order to deal equitably with those shareholders who are not taxable or whose rate is below the Company rate. With regard to the wider question of substituting the method of Taxation at the Source for that of taxing the individual direct in respect of all Company dividends, the Commissioner was opposed to such a change on the grounds that it would involve additional expense, estimated at about £18,000 per annum (being the cost of an additional staff to deal with refunds), and that there would be no net gain to the revenue. This opinion means that in the Commissioner's view the method of "Information at the Source" now in operation is so complete as to afford a protection to the revenue equal to that attainable by Taxation at the Source. In this respect his view is in opposition to that expressed with the strongest emphasis by the British Royal Commission of 1920 (*see* paragraph 3). One of the British Commissioners of Inland Revenue, in evidence before the British Royal Commission, stated :—

> "Taxation at the Source is the primary safeguard against evasion of duty, because it deprives the taxpayer of opportunity to escape, either by carelessness or by ignorance or by fraud, from payment of his due share of Income Tax. It is obvious that at any time and in any circumstances abandonment of the system would result in a heavy loss, and that at the present day, when the exceedingly high rates of duty afford an unparalleled temptation to the taxpayer to give himself the benefit of the doubt and even wilfully to evade the tax, abandonment of the system would be disastrous.
>
> In my judgment, the abandonment of the system would result in a dead loss to the Exchequer of upwards of £50,000,000 a year."

In Great Britain, the proportion of tax obtained by Taxation at the Source is stated by the British Commission to be about 70 per cent. The loss estimated by the Board of Inland Revenue, if the system of Taxation at the Source were abandoned (£50,000,000), may be set down as approximately 20 per cent. of the whole Revenue. If anything approaching the same percentage of loss is incurred in Australia by non-adoption of the British system (and this seems quite probable), the argument in opposition based upon the expense of a Refund Staff becomes untenable.

8. With regard to Information at the Source, it is fair to say that the position of the Commonwealth Commissioner is much stronger than was that of the Board of Inland Revenue [illegible] the time of the British Commission's Report. The British authorities had not the same [illegible]rs of investigation of books and documents as are possessed by the Commonwealth [illegible] The British Commission remarked, indeed, that the powers of investigation [illegible] Board of Inland Revenue—

> [illegible]ely limited, and there can be no doubt at all that knowledge of this [illegible] taken advantage of by the unscrupulous."

That Commission made a number of recommendations with a view to conferring upon the Board complete powers of investigation. Their recommendations, indeed, went beyond the powers conferred by the Commonwealth Act, but, **after allowing for this large extension of investigating power,** that Commission was "not satisfied that any system of Information at the Source would be a practical and efficient substitute for" Taxation at the Source. The inadequate powers of investigation possessed by the Board of Inland Revenue were in practice materially increased—

(*a*) By free use of the power to make default assessments, which placed the taxpayer in the position that, if he challenged those assessments, he could be called upon to produce books and documents; and

(*b*) By extensive use of the check upon tax evasion which local knowledge provides. Extraordinary opportunities for application of this check arise from the extreme decentralization of the British administration and the very large use of local officers and of local Commissioners (of whom there are 5,600, having jurisdiction in 725 separate districts).

9. **State Commissioners.**—The State Commissioners, all of whom are familiar with a method of Company Taxation which leaves the shareholder out of account altogether, are naturally impressed with the simplicity and certainty which that method affords. Their opinions were not uniform with regard to the question whether such a method should have the element of equity introduced by a provision for adjustments to shareholders, so that eventually no taxpayer would be charged upon his dividends at a rate higher than that appropriate to his total personal income. Whilst some favoured the introduction of adjustments to shareholders, one or two were opposed to that change.

10. (1) **Present Commonwealth Mode of dealing with Undistributed Profits.**—It has been shown above (paragraph 3) that, where dividends are wholly or in part derived from "Undistributed Profits," that is—profits of previous years, which at the time had been withheld from distribution, the Commonwealth Income Tax Act operates inequitably. This inequity affects (A) shareholders whose total income, including dividends, is less than the exemptions to which they are entitled, with the consequence that they are not taxpayers, and (B) shareholders who, though taxpayers, receive only a partial refund or rebate of the amount paid as tax by the Company in respect of "undistributed profits". The following comparisons, founded upon figures supplied by the Commonwealth Commissioner of Taxation, indicate the extent of the injustice caused by the present system to shareholders in the above groups (*a*) and (*b*):—

(*a*) The total profits of Companies in Australia for the year ended 30th June, 1920* (or the trading period taken in lieu thereof for taxation purposes), was		£42,216,256
(*b*) The amount of dividends taxed to shareholders was ..	£10,612,929	
(*c*) The amount of dividends received by non-taxable shareholders (their total income being less than the General Exemption) was	8,772,687	
(*d*) The amount of undistributed income taxed to the Companies was	22,830,640	
	..	42,216,256
That is, fully 54 per cent. of the income was taxed in the hands of the Companies at 2s. 8d. in the £1, the tax amounting to		3,044,085

If the profits under heading (*d*) were distributed in the following year, they would fall into groups, corresponding to (*b*) and (*c*) above, thus:—

(*e*) The amount of dividends taxable to taxpaying shareholders ..	£12,498,555
(*f*) The amount of dividends payable to non-taxable shareholders ..	10,331,685
being a total as above	£22,830,640

The tax to be paid by the Company would thus be—

In respect of shareholders in group (*e*)	£1,666,527
In respect of shareholders in group (*f*)	1,377,558
being a total as above	£3,044,085

* The Commissioner states that the year in question disclosed abnormally high profits, and he expressed the opinion that a deduction of 15 per cent. should be made from the figures if comparison with other years is sought.

(2) Shareholders in group (*f*) who are not directly taxable as individuals (their income in each case, inclusive of dividends, being less than the General Exemption) would thus pay, indirectly through the Company, tax amounting to £1,377,558, and, as such shareholders number about 200,000, they would pay on an average £6 17s. 3d. in tax, for which they would receive no refund or allowance. This figure of tax should probably be slightly reduced, in view of the fact that, if the amount shown under item (*d*) had been distributed, some of the shareholders in Group (*f*) would perhaps have been brought into the taxable field as individuals.

(3) With regard to shareholders in Group (*e*), the result is not quite so obvious. Group (*e*) must be considered as consisting of two sub-groups, viz.:—

1. Those whose individual rate of tax is less than the Company rate.
2. Those whose individual rate is greater than the Company rate.

(4) The Commissioner has informed us that the taxpaying shareholders whose individual rates are less than the Company rate number about 25,364, and those whose rates are greater than the Company rate number 2,636. No exact figures are available showing the respective proportions of the whole tax paid by each of these groups, but, using as a basis figures of distribution of income given in the Commissioner's Seventh Annual Report, and making the assumption that the average individual rate among those whose rates do not exceed the Company rate, is 1s. in the £, it appears that the 25,364 shareholders covered in that category would pay indirectly through the Company—in excess of the amount credited to them by way of rebate, *i.e.*, used in payment of their individual tax upon the dividend—the sum of about £300,000, or an average of nearly £12 per head.

11. **Should Refunds in respect of Dividends paid from Undistributed Profits be made to the Company or to Individual Taxpayers.**—As to the mode of making the refunds which will be necessary in these cases if justice is to be done, the more obvious course is that of paying the amount due as a refund direct to the taxpayer, or allowing it as a rebate from his assessment. The objection to this, from the point of view of administrative cost, is that a very large number of individuals must be dealt with, and for that reason some witnesses suggested that the necessary refunds should be made direct to the Company. For example, if a dividend, say of £10,000, were paid by a Company entirely from the accumulated profits of earlier years, upon which the Company had paid tax at the present rate of 2s. 8d., the suggestion was that, as the taxpayers become individually liable (if taxable at all) for taxation upon the amounts received, the whole sum originally paid in tax by the Company on the amount of such dividend should be returned to the Company. Obviously, this would provide the Company with a fund from which a further dividend might be paid, or it might be used to augment the next regular dividend. This suggested method certainly possesses the advantages of ease and saving in clerical work, but, from the point of view of shareholders of small income, it does not possess the same element of equity as the method of dealing directly with shareholders. It also detracts from the value of the method of Taxation at the Source, by removing from taxpayers the incentive to bring themselves into contact with the Department, which otherwise would become necessary in order that they should receive their refunds. On the whole, the disadvantages of refunding to the Company, in our opinion, outweigh the advantages of that course.

12. **Refunds and Adjustments Generally.**—The question of refunds in respect of dividends arising from undistributed profits referred to in the preceding paragraph is only one phase of the wider question of refund, which would become a practical question if the system of Taxation at the Source were adopted. The objections of the Commonwealth Commissioner on the score of expense, estimated at £18,000 per annum, have already been mentioned. The necessity for refunds exists in any equitable scheme by which Income Tax is intercepted at the point where it arises, whether applied to the whole or restricted to the undistributed part of the profit of the Company. In our opinion, the benefits accruing from such an interception of tax are so great that the expense with regard to refunds and adjustments may be looked upon as representing a very moderate premium for the advantages secured.

ADVANTAGES AND DISADVANTAGES.

13. **Advantages**—

Taxation at the Source is—

1. **Equitable.**—Any evasion of tax whether due to inadvertence or to design involves an added—and unjust—burden upon those taxpayers who without concealment or omission return the whole of their taxable income. Taxation at the Source in the sphere to which it is applied defeats evasion and prevents inequity by—
   (*a*) Creating an incentive to taxpayers whose rate is less than the Company rate to make full disclosure in their return of all income derived in respect of which tax at the source has been collected in order to claim the rebate which may be due to them on account of the tax paid on their behalf; and by
   (*b*) Bringing into contact with the taxing authorities persons who should pay tax, but who otherwise might fail to render return.
2. **Convenient.**—The Company taxpayer as agent for all its shareholders makes a single payment in respect of tax on the whole of its taxable income whether such income be distributed in dividends or not, and it then rests with the Department in its ordinary checking of the returns of the shareholders to allow credits in their assessments for such sums as have already been paid on their behalf by the Company.
3. **Certain of Collection.**—The fundamental advantage of a method of Taxation at the Source is the certainty that, in respect of the collection of tax on the Income to which the method is applied, there can be no evasion by a shareholder through fraud or negligence or through his leaving the country after collecting dividends and before paying tax thereon.
4. **Economical.**—Taxation at the Source will not place any greater burden upon Companies than is done by the method of Information at the Source, but will tend to lighten that burden, since it will probably eliminate almost the whole of the work involved in dealing with the special inquiries now made by the Department from Companies in respect of individual assessments.

   The work of the Department would also be lightened by removing the necessity for much investigation which has now to be undertaken to check omissions and evasions in shareholders' returns and correspondence consequent thereon.

14. **Disadvantages.**—The administration will collect considerable sums which must ultimately be refunded to shareholders. Apart from expense to the Department in making refunds, there is the more serious element of a temporary inconvenience to those who for a time at least must stand out of money to which they are properly entitled. Such inconvenience is, however, limited to those taxpayers whose total tax proves to be less than the sum paid on their behalf by the Company from which they drew dividends. In the case of small incomes the sums temporarily retained by the Department will also be small, as the amounts increase the inconvenience does not increase but decreases, since the more nearly the taxpayer's individual rate approaches to the Company rate the smaller will be the proportion of tax paid by the Company which will ultimately be claimable as rebate by the taxpayer. It may be considered a partial set-off to the disadvantage under review that a taxpayer in this group is not called upon to make any actual payment; but is receiving, in the first place, the dividend (less tax) from the Company and, in the second place, such refund or rebate from the Department as represents the excess (if any) of the tax paid by the Company over that which is due from the individual.

15. Paragraph 276 of the Report states as a second disadvantage that—

> "Some revenue gain (it is difficult to estimate how much) will be due to the failure of taxpayers, either through ignorance or neglect, to make and establish their claims for refund or credit."

The possibility of such failure through ignorance could easily be prevented by Companies issuing to each shareholder with the dividend warrant or cheque a slip explaining the conditions under which a claim for refund or credit becomes due and the mode of making the claim. Neglect on the part of the taxpayer to apply for any refund to which he knows himself to be entitled can hardly be a cause of complaint against the method, and the Administration might well devise special means for facilitating the payment of such refunds. If, as the argument of the Report assumes, a material amount of Revenue would probably be derived from the neglect of taxpayers to apply for refunds which they know are obtainable on application, how much greater effect upon the Revenue, but in the adverse sense, probably arises under the present system from the neglect of taxpayers or those who should be taxpayers, and who are not now reached through Information at the Source.

16. (1) **Taxation of all Company Profits in the hands of shareholders, whether the Profits are distributed or not.**—We are all agreed that the primary scheme of the Commonwealth Income Tax Assessment Act is to tax individuals at the rate appropriate to their taxable income. The provisions with regard to the taxation of a Company's undistributed profits in the hands of the Company constitute an important and undesirable departure from this main principle. This not only leads to a number of complications which cause confusion, expense and irritation, but also creates opportunities, particularly in respect of Proprietary Companies, for certain forms of abuse. In our opinion, this intrusive element could with great and permanent advantage be removed by full recognition of the principle of individual taxation. This could be effected by treating the whole of the disclosed profits of a Company at the end of each accounting period as if they had been distributed to the shareholders, according to their class, preferred, ordinary, deferred, &c., and as taxable in their hands. This is now the case with regard to the disclosed profits of a Partnership, and there is no logical reason why the same principle should not govern the taxation of Company profits. In the one case as in the other the proportion of profits distributed, as well as the application and use of the proportion not distributed, is determined by the persons who hold the beneficial interest, and with a view to their own gain, immediate or prospective. Under this method the function of a Company as taxpayer would be extended (but only as an intermediary, an agent for the shareholders) to pay tax, at a rate to be fixed, upon the whole of the profits, distributed or undistributed. Each shareholder would be regarded as having received a proport on of the total profits corresponding with his individual interest therein, but would be entitled to rebate or refund, if the rate of tax payable upon his total taxable income, including his share of the Company profits, were less than the rate paid by the Company on his behalf. Similarly, if the operations of a Company in any year result in a loss, such loss would for purposes of taxation be apportioned among the shareholders in the proportion to their interests, having regard to the class of shares held, and be treated correspondingly in the shareholders' individual returns. The advantages of this change may be summarized thus :—

1. That it would produce a more perfect compliance with the main scheme of the Act.
2. That it would effect a great simplification.
3. That it would place shareholders in Companies in respect of the profits or losses of the undertaking on the same footing as members of a partnership, thus introducing uniformity of treatment which is now absent.
4. That it would provide a safeguard for the danger to the Revenue pointed out in paragraphs 139 and 140 of the Commission's First Report. Those paragraphs deal with the case of bonus shares issued in respect of profits of the current year. The danger in question where shares are issued in that way, is that, if bonus shares be treated as capital, neither the Company nor the shareholder would be liable to taxation in respect of those shares.
5. That it would prevent the occurrence of the difficulty indicated in paragraph 293 of the Report.

(2) If under this method a Company furnished each shareholder with a slip showing the total amount of the profits of the year and his share of those profits, also the amount actually distributed, the shareholder would be in possession of all the necessary facts, both with regard to his relations with the Company and his relations with the Taxing authorities.

(3) If the method indicated in this paragraph be not adopted, we do not think the general question of Taxation at the Source treated in this reservation should be regarded as thereby prejudiced.

17. The method suggested in the preceding paragraph is criticised in the Report on the grounds—

1. That it would mean that shareholders would be required to pay tax upon profits which are not received and may never be received by them, except in the remote contingency of the winding up of the Company, or indirectly through a more or less appreciable addition to the market value of their shares.
2. That it would tend to the distribution of too large a proportion of Companies' profits rather than the provision of means of development and financial stability by building up reserves.

As to the first ground, it is correct that shareholders, if treated, as they would be under this method, in the same way as members of a partnership, would still continue the practice of investing some of the profits in machinery, plant, &c., or in some other way connected with the business, with the result that those profits would reach the hands of the shareholders only in the form of future profits. This is a common incident of business, and in our opinion does not affect the validity of the method we suggest. With regard to the second objection, that the introduction of the proposed method would weaken the prudent management of their affairs by Company Directors, t may be sufficient to say that, not only with regard to Companies, but also with regard to businesses, whether individual or partnersh ps, there must be a continual weighing of the respective advantages of distribution of the profits earned as against re nvestment in the business. We do not share the view that business men would cease to be guided by prudential considerations.

18. **Extension of Taxation at the Source to Incomes other than Company Dividends.**—Paragraph 257 of the Report shows the wide range of incomes to which the method of Taxation at the Source is applied in Great Britain. During our inquiry witnesses (perhaps because of their familiarity with the State methods, which deal only with Company dividends) rarely made any suggestions in respect of extension of the method of Collection at the Source to such sources of income as—

Interest, either on Government Securities or Securities of local authorities ;

Interest from deposits with Financial Institutions ;

Interest from Mortgages or other forms of security upon real property ; also

Salaries of officers of Public Departments and of all large organizations, public or private.

19. In principle, the method of Taxation at the Source, in respect of those sources of income is entirely equitable, and in a large majority of cases would be convenient to, and would greatly reduce the actual pressure of the tax upon, the individual, as deductions would be made from periodical payments, and no positive outgoing of a direct kind would be demanded from the taxpayer. The question of raising tax by this method upon Company dividends is, however, the one which is most prominent in the public consideration of the question, and, in our opinion, it is desirable that the method should first be applied to that class of income. It may soon be found possible, as we think it is desirable, to extend it to some at least of the several other sources of income so taxed under the British system.

20. **Conclusions.**—On the broad general question of the substitution of the method of Taxation at the Source for the individualistic system now mainly in force in the Commonwealth, we are satisfied that the system of Taxation at the Source possesses advantages which justify its adoption. We are also of opinion that, as shown above, the total profits of a Company, whether distributed or not, should be deemed to have been received by the shareholders in proportion to their individual holdings, and consequently to be taxable in the hands of the shareholders. Losses should be treated similarly. This proposal would eliminate the Company as ultimate taxpayer in respect of any of its profits, even those which are never distributed, and would substitute the constituent shareholders. For reasons already indicated, we are unable to recommend the system of Company Taxation now in operation in the Australian States, as we consider it inequitable. That system penalizes shareholders whose incomes are small, and provides bonuses for those whose incomes are large. On the question of removing the injustice now done to taxpayers under the Commonwealth Act, where dividends are derived from "undistributed profits," we repeat our opinion that the Act should be amended to insure that no shareholder shall be called upon to pay tax on account of dividends, however derived, at a rate higher than that applicable to his individual income. With respect to the further question as to whether refunds in respect of tax overpaid upon dividends derived from undistributed profits should be made to the Company or to the individual, we favour dealing directly with the individual concerned.

21. **Extent of Concurrence with Recommendations of the Report.**—With regard to Recommendation (1) of the Report, our position is—

(*a*) We dissent from that portion of the Recommendation reading "that the profits of Companies be taxed in accordance with the existing law."

(*b*) If our own Recommendation "B" be adopted, Section 16 (2A) of the Income Tax Assessment Act will become unnecessary, and consequently the amendment of that sub-section suggested in the second clause of Recommendation 1 would also be unnecessary.

(*c*) If our Recommendation "B" be not adopted, we wish to be understood as concurring in the proposed amendment to Section 16 (2A).

We concur in Recommendations 2 and 3 of the Report (but see parenthesis following Recommendation B).

RECOMMENDATIONS.

We recommend—

A.—That the method of Taxation at the Source be applied to Companies—*i.e.*, that Income Tax at a uniform rate be collected from Companies in respect of the whole of their net profits, whether distributed to shareholders or otherwise dealt with, and that shareholders, whether taxpayers or not, be entitled to rebate or refund (as the case requires) of the sum paid in Income Tax by the Company proportionate to the interest of such shareholders in the whole of the net taxable profits of the Company.

B.—That each shareholder in a Company be regarded for taxation purposes as having received a proportion of the total disclosed profits of the Company, whether distributed or otherwise dealt with, correspond ng with his ndividual holding; that he be required to show such proport.on of the total profits in his return of income; and that, subject to any allowable deductions, he be taxed upon such proportion of the tota profits, as forming part o. his taxable income, and that from the tax thus ascertained there be deducted a sum having the same proportion to the tax already paid by the Company as his share of the profits bears to the total profits of the Company. (It will be seen above that we concur in the Recommendations of the Report the intention of which is to insure that no shareholder shall be called upon to pay tax on account of **dividends,** however derived, at a rate higher than that applicable to his individual income. If our Recommendat on " B " be adopted, the same principle would of course apply to taxation of the shareholder on account of Company **profits,** whether actually distributed or not. In that case Section 16 (2) of the Act and the amendment of that Sub-section proposed in Recommendation No. 2 of the Report would become unnecessary.)

JOHN JOLLY.
W. T. MISSINGHAM.
S. MILLS.

DIFFERENTIATION.

RESERVATION.

1. I am not able to accept the arguments, the conclusions, or the recommendations contained in the Report of the Commission on this subject, and respectfully submit my reasons :—

2. **Definition.**—Unless the context implies another meaning, the term differentiation is used throughout this reservation to express the discrimination which is made (not in the income tax law only but) in any part of the system of taxation as between incomes that are earned by the personal exertion of the taxpayer and incomes that are not so earned.

3. **The Differentiation Recommended.**—The differentiation proposed in the Report is arbitrary, erratic, and inequitable, and would in practice be troublesome and perplexing. Why the rate should be 15 per cent., and not 10 per cent. or 20 per cent. or any other rate, is not disclosed; the rate is quite unsupported by any logical reasons, is purely arbitrary, with equal arbitrariness it erratically disappears, and throughout its career it is inequitable.

4. In the Recommendation (and elsewhere) the word " income " is used ambiguously. It is not clear whether the percentage proposed is to be based on the total income (the impression which paragraph 318 creates) or on the net income after deducting the general exemption and other concessional allowances (the impression which paragraph 319 leaves). The former paragraph indicates, however, that the procedure of the British Act is favoured, which deducts allowances in respect of dependants, insurance premiums, and other concessional allowances from the net income, and confines the percentage deduction to the net assessable balance. The typical wage-earner, married and with three dependants, who reads paragraph 318 " an income of **£300** reduced by 15 per cent. amounts to **£225** " and expects that, under this scheme, **£45** would be exempted from tax, will be disappointed to learn that it will exempt in his case **£13** only. If the percentage, whatever be the rate, be taken off the net income before concessional allowances are deducted, the scheme still operates inequitably.

5. The closing sentence of paragraph 318 exposes the inequitable operation of such a continuing scheme in that as income increases, the differentiation increases both in absolute and in relative value, but the table in paragraph 319 shows that precisely the same effect is inseparable from the method proposed in the Report until a partial counteractive is introduced. To correct this and infuse some colour of equity a sliding scale is proposed at £1,500 which introduces added complexity into an Act already complex enough, and will, when all is done, be remedial in only a very small percentage of cases. The inequitable influence of the scheme will be felt without any mitigation right up to incomes of **£1,500,** and seeing incomes under **£1,500** number more than 97 per cent. of all the taxable incomes in the Commonwealth, the mischief is widespread, almost universal. The attempt to modify gradually its operation in regard to four-fifths of the remaining 3 per cent. and to exclude it from operating on the remaining ½ per cent., implies condemnation. In paragraph 316 of the Report it is written :—" In our view the carrying forward of differential effects throughout all ranges of income is not in harmony with the principles upon which differentiation is based." What then can be said in defence of a scheme which carries forward these differential effects into 99½ per cent. of all incomes and leaves only one half per cent. untouched by it ?

6. **Relation to System of Taxation.**—In any Taxing Act regard should be had not only to the effect of other provisions in the Act itself, but also to the operation of all the Acts which with it compose the system of taxation. This principle is recognised and applied in practically every country. If the subject of taxation is already struck by some other Act that fact must be duly weighed and its effect taken into account when considering with what force or whether at all it should again be struck by another Act. As specific instances, the income from land subjected to State land tax was by the New South Wales Act exempted from assessment for income tax, and a similar rule, though of more limited application, operates in Victoria. The brief survey of European taxing systems contained in the Commission's Report indicates that in all continental countries the incidence of an income tax is adjusted to the conditions created by other—land, property, capital, inheritance, industry, &c.—taxes.

7. The operation of estate or probate duties cannot correctly be described as " generally undesigned, remote, uncertain, and little understood " in their differential effects on income tax (par. 314 of Report). Every student of taxation knows them well. Nor could it be otherwise

for the object in view is the establishment of a sound and equitable *system* of taxation, to which end the several parts must co-ordinate. Each must conform to the general canons that govern the tax system, and should be adjusted to the other component parts with which it has to make a harmonious whole. No single tax can be rightly appreciated without reference to the financial system of which it forms a part. I must, therefore, dissociate myself from the decision expressed in the Commission's Report (par. 314)—

> "We do not accept the contention that estate duties can properly be regarded as effecting a real differentiation of income tax."

Nor do I feel myself isolated in doing so.

8. **Opinions of Recognised Authorities.**—In a lengthy discussion of the justification for, and the operation of, inheritance taxes which is described by Professor Plehn, of the University of California, as "the best discussion of this interesting field of taxation," Professor Seligman, in his "Essays in Taxation," writes :—

> "When, therefore, we have a system of income taxes, the inheritance tax may be regarded as a supplementary tax to reach the real ability of the individual. Moreover, *it may be regarded as a convenient method of applying the principle of differentiation in taxation of income.* It is now commonly recognised that incomes from property should pay a higher rate than incomes from labour. Instead of making a difference in the rates to reach this end, the proportional income tax may be supplemented by a property tax; or where this is for any reason undesirable, by the inheritance tax. The latter would then serve the double purpose of reaching not only accidental incomes, but also property incomes, since all inheritances take the shape of property." . . . . *"For in so far as property is at all an adequate test of faculty in taxation, it is simply a mode of estimating the regular revenue or income."*

9. Lord Milner, giving evidence before a Parlimentary Commission, said :—

> "I regard the death duties as *equivalent to an extra income tax on property.*"

10. Professor Bastable, in his work on "Public Finance," writes :—

> "Assuming that we have a rule of distribution, the burden of succession duties should be so adjusted as, together with other taxes, to secure its observance. From this point of view the chief difficulty with the succession duties is their necessarily irregular levy. Human life is uncertain in its duration, and, as Gladstone once asserted with his wonted impressiveness, 'no man can die more than once.' Taking the average, however, we find that a fairly constant proportion of property passes annually by death, and *we are thus led to regard the death duties as a capitalized income tax levied only on accumulated wealth, and sparing those comparatively temporary parts of income that result from personal exertion.*"

and adds a footnote :—

> "The system of insurance so extensively advertised by British insurance companies to meet the estate duty of 1894 [the year when estate duty was first introduced into the British system] indicates very plainly that this is the essential character of the tax. This view is adversely criticised by Seligman (Essays, 132), on the grounds that (*a*) if the existing system (*i.e.*, without the inheritance tax) does reach the living taxpayer, there is the injustice of double taxation; (*b*) if it does not reach him, there is inequality between persons dying at different ages. To which it may be rejoined that (*a*) it is because the existing system only partially reaches the taxpayer that the inheritance tax is introduced; and (*b*) that there *is* inequality in the case of persons dying at different ages, but this, like other inequalities, is hardly avoidable without incurring greater evils."

Summing up a long and incisive discussion of the question, Professor Bastable concludes with the paragraph ("Public Finance)," page 608)—

> *"On the whole, we may best regard the succession duties as presenting a parallel to the income tax. The latter withdraws annually for the service of the State a portion of the new wealth created in the period: the former operate in the same way, but at uncertain intervals, on the collective wealth of the society."*

11. The Report in paragraph 311 includes a quotation from an article published in 1919 by Sir Josiah C. Stamp, inserted as expressing his disagreement with the view that death duties should be regarded as an added income tax. Had a more complete extract been inserted it would have been evident that what Sir Josiah is combating is not that death duties should be regarded as an added income tax, but that the particular argument he was discussing was inconclusive because there are a few incomes from property which death duties do not reach. The writer continues, in the same paragraph and immediately following the extract printed in the Report—

> "A sufficient reason exists for the differentiation between an income which is earned and one which is being derived *from a life interest in property.* The death duties cannot effect *this* distinction, for they affect neither recipient."

His argument, not disjointed, but read as a whole, is a declaration of the close connexion between income tax and the death duties—close, but not quite universal, because there are a few incomes from property which death duties do not reach. A defender of the British system of treating both classes of income alike, he writes in the same article—

> "In treating them [earned and unearned incomes] as equal in power [to pay income tax] there is a rough correspondence with the facts of life, for the recipients rarely make nice actuarial calculations or introduce differences into their mode of life and scale of expenditure to correspond with the differences in their capital position."

and he adds—

> "If we adopt the fashionable mode of treating the death duty as one which can reasonably be regarded as provided for annually out of income by insurance, then of course it is but an extension of the income tax, and can be made progressive on the same lines of reasoning."

12. In 1906 a Special Committee of the House of Commons was appointed to report upon "the practicability of graduating and of differentiating for purposes of the income tax"—a small field which the members were able to examine microscopically. In dealing with the bearing which the incidence of the death duties has upon the graduation and differentiation of the income tax they report—

> "The death duties have always been regarded as partaking to some extent of the nature of deferred income tax, and it has been contended that the combined operation of the two taxes does in practice effect a very considerable graduation and differentiation. Sir Henry Primrose and Mr. Mallett submitted to us various calculations which will be found in the appendix, the object of which is to show what rates of income tax are represented by death duties, or, in other words, what rate of income tax paid annually during life on the income from the property would be equivalent to the death duties paid on that property."

And after a synopsis of the principal evidence tendered, the Committee added—

> "These conclusions clearly show that if the income tax and the death duties be regarded together as a form of income tax, there is *already a very substantial graduation of taxation on incomes derived from large estates, and differentiation between large incomes derived from personal exertion and those derived from inherited property.*"

13. A separate report drafted by the Chairman of the Committee (Sir Charles Dilke) concluded with this paragraph :—

> "A Chancellor of the Exchequer, in considering differentiation, cannot exclude graduation from his view, and *cannot confine his attention, as we have been asked to do, to a single tax.* Your Committee have felt throughout their investigation that while the terms of reference direct them to deal only with the income tax, *our system of taxation must always be treated as a whole, and defects, obvious if the income tax is looked at by itself, lose much of their importance when viewed in connexion with the compensatory effects of other taxes.*"

14. The weighty judgments of these and many other authorities on taxation, and the general consensus of educated thought on the subject, compel me to dissent from the opinion expressed by my colleagues in paragraph 314 that the operation of the estate or probate duties has "a generally undesigned, remote, uncertain, and little understood differential effect upon income tax." The operation is powerful, intimate, and well understood by students of taxation. That the general public do not fully appreciate the influence of these duties does not justify an ignoring of its existence or release investigators from the responsibility of endeavouring to accurately measure its weight.

15. The divorce between Commonwealth estate duties and income tax referred to in paragraph 314 of the Report need not be taken too seriously; the bonds of wedlock which unite them are strong, and they should remain united till the death of one or the other parts them.

16. The claim (made in the same paragraph) that "the wastage of the human machine can be adequately recognised in taxation by means of differentiation in the income tax" is novel in conception but destitute of proof. Can any degree of differentiation be "adequate recognition of the wastage of the human machine" which affects impartially rich and poor? When and where has "wastage of the human machine" become one of the recognised allowances under an income tax Act which concerns itself with wealth and has been stoically indifferent to health?

17. **Measure of Differentiation.**—That differentiation exists between incomes earned by the mental and physical powers of an individual, and therefore precarious, and incomes not depending for their continuance upon personal exertion and usually therefore more permanent in their nature, evokes general consent, and is unanimously concurred in by your Commissioners. One turns in vain, however, to the Report for any principle or for guidance to determine what is the degree of differentiation between them. The Report may be searched fruitlessly for an answer or for any rationally stated and accepted principle by which to determine the degree which is both adequate and equitable—a rational principle is referred to in the Report but it is not accepted. There is no statement in the Report of "the principles on which differentiation is based," and no reasoned attempt to discover criteria or devise a method by which to measure and determine the degree, uniform or variable, by which the one class of income should be differentiated from the other. A matter of this kind cannot be determined by a random shot or "a splitting of the difference" between those who without assignable reasons advocate a high degree or favour a low degree of differentiation.

18. I respectfully submit that in determining the degree of differentiation to be allowed in an income tax act—

1. Regard must be had to the operation of death duties—under whatever name—Probate, Estate, Legacy, Succession, Inheritance, &c.—they are known, and other taxes on capital;
2. That a reasonably accurate valuation of the differentiation created by these taxes can be and should be made in order that the effect may be studied in its incidence on Incomes; and
3. That seeing the object is to express differentiation in terms of tax, a systematic attempt should be made to appraise in terms of money and tax the difference in value to their recipients of the one as compared with the other class of income.

19. **Estate Duty considered as Deferred Income Tax.**—The reference by Professor Bastable (paragraph 10) to the system of insurance to meet the Estate Duty suggests that one method of estimating the yearly burden of the duty is to assume that the holder insures against the payment at his death. The annual premium paid for this provision will be some approach to the measure of the yearly burden cast by Federal estate duties. Viewed from the stand-point of the State as a tax-gatherer, it is immaterial to the Treasury whether the revenue reaches it in the vesture of Death Duties or arrayed as Income Tax. One is less regular, but both are equally serviceable. There is little difficulty in expressing one in terms of the other. Calculations have accordingly been made, and are tabulated on Schedule No. 1, which follows. The annual income (column B) is throughout assumed to be 5 per cent. of the capital value of the estate (column A). In column C is shown the Income Tax payable on such an income from personal exertion under the current scale of the Federal Act, and in column G the percentage which the tax bears to the income. In column D are shown the rate and the amount of Federal Estate Duty payable on such an estate under the scale at present in force. To provide a sum sufficient for the Estate Duty payable at his death, the holder, who is assumed to have himself succeeded to the Estate when about 30 years of age, may insure his life under a non-participating policy at an annual premium of about **£2 2s. 9d.** per **£100.** In column E is shown the annual premium at that rate payable to secure payment at death of the duty named in column D. In column F is shown the total amount payable for both income tax (at personal exertion rate) and premium, together constituting the total annual provision made for duty and tax, and in column H the percentage which the total amount (F) bears to the income (B). In column I the ratio of the total tax (F) to the tax on personal exertion income (C) is shown.

SCHEDULE NO. 1.

FEDERAL ESTATE DUTY CONVERTED INTO ITS EQUIVALENT IN DEFERRED INCOME TAX.

(Assuming the Estate to pass undivided to a single inheritor.)

A. Value of Estate just over—	B. Assumed Income at 5 per cent. of Value of Estate.	C. Federal Income Tax on Income at R.E. Rate.	D. Federal Estate Duty. Rate in Shillings per £100.	D. Federal Estate Duty. Amount.	E. Annual Premium at £2 2s. 9d. per cent. on amount of Duty D.	F. Total of Tax C plus Premium E.	G. Percentage which Income Tax at R.E. Rate C bears to Income B.	H. Percentage which Tax plus Premium F bears to Income B.	I. Multiple which H is to G, that is, if Income Tax C be normal and valued at 100, Value of total Tax F is as follows:—
£	£	£ s. d.	s. d.	£	£ s. d.	£ s. d.	%	%	
3,000	150	1 7 6	28 0	42	0 17 11	2 5 5	·9066	1·5125	165
5,000	250	4 14 1	36 0	90	1 18 5	6 12 6	1·881	2·65	141
8,000	400	11 2 8	48 0	192	4 2 0	15 4 8	2·783	3·808	137
10,000	500	16 7 7	56 0	280	5 19 8	22 7 3	3·275	4·4725	137
15,000	750	30 19 10	76 0	570	12 3 8	43 3 6	4·133	5·758	139
20,000	1,000	47 19 9	96 0	960	20 10 4	68 10 1	4·8	6·85	143
30,000	1,500	91 19 7	136 0	2,040	43 12 1	135 11 8	6·2	9·037	147
40,000	2,000	149 5 11	176 0	3,520	75 4 10	224 10 9-	7·462	11·205	150
50,000	2,500	219 18 11	216 0	5,400	115 8 6	335 7 5	8·796	13·4166	152
60,000	3,000	303 18 6	256 0	7,680	164 3 2	468 1 8	10·129	15·604	154
80,000	4,000	511 17 6	300 0	12,000	256 10 0	768 7 6	12·796	19·225	150
100,000	5,000	773 2 10	300 0	15,000	320 12 6	1,093 15 4	15·462	21·367	141

20. In this table the rate of the total annual tax on property income—based on the current rates of Estate Duty and of tax (in all cases) on incomes from personal exertion—ranges from 37 to 65 per cent. in excess of the tax alone on incomes from personal exertion.

21. This method of valuation, which assumes the Estate Duty to be a *deferred* payment, under-states, in some cases seriously, the burden of the tax, as will be shown in the later part of this reservation.

22. **Appropriate Degree of Differentiation.**—Do these rates represent a sufficient or an excessive rate of differentiation. There are incomes from investments which are far from being permanent, there are incomes from personal exertion which are less precarious than some derived from investments, and there are business incomes in which the two characters (personal effort and investment) blend in every variety of proportion. Each contains elements which cannot be measured, investments are lost, health and employment are uncertain, remuneration of both labour and capital is variable; but generally the attribute of permanence is considered to attach to the one, and comparative precariousness to the other. A clean line of cleavage between the two is not followed, but probably this constitutes the main, if not the only, distinction, generally observed.

23. From the Commonwealth Bureau of Statistics was received evidence that at 21 years of age the average expectation of the life of males is 43·902 years, and that—

> "the Census returns for 1911 (the latest then available) show that the number of those who drop out of income earners before the age of 65 years (for reasons other than death) is comparatively small."

In the eight years immediately preceding the War (1906-1913) the average percentage of unemployment from all causes was 5·6 per cent., of which approximately 1 per cent. was due to sickness and the balance to lack of work. These figures do not include persons out of work through strikes or lock-outs.

We are not in this inquiry concerned with persons whose incomes do not reach the amount of the general and other exemptions—

Single persons earning not more than	£104,
Married persons without dependants earning not more than	£156,
Married persons with three dependants	£234,

are not liable to Federal Income Tax, and any question of differentiation can apply only to persons earning incomes in excess of these exempt sums.

Without adopting the extreme limits of these official figures, it may be accepted that the full earning period of the average worker extends from the twentieth to beyond the sixtieth year—fully forty years—during which he should be able under reasonable conditions—and such conditions are assured for the humblest worker by the industrial laws which operate in every State of the Commonwealth—to save sufficient to enable himself and his wife to enjoy in their later years, without physical effort the same standard of living as was enjoyed during the forty years

of active earning. To determine the appropriate degree of differentiation necessary as between funded and industrial incomes there emerges the question—What sum must be set aside from the income of the earning period to provide an old-age pension fund for the worker and his wife? During the years of bachelorhood and while the family is small, the requirements will be less than in later years, and as the children grow up and become self-supporting the necessary outlay will diminish, but, averaging throughout the forty years of industrial efficiency, making allowance for the average idleness through sickness or lack of employment, and assuming money to accumulate at the rate of 5 per cent. per annum, the margin of saving necessary may be ascertained thus :—

24. A unit saved with annual increments of a similar unit will with interest at 5 per cent. per annum, amount in forty years to 120·79977 units. In their sixtieth year there will be a fund of 120·79977 units, with which can be purchased an annuity payable during the lifetime of both or either (that is, until the death of the survivor) of $\frac{120{\cdot}79977}{11{\cdot}852} = 10{\cdot}1923$ units.

The operations, as they relate to persons whose income brings them within the taxable area, may be illustrated thus :—

A. Average annual income from personal exertion during active years—after making allowance for sickness, lack of employment, &c. ..	£200	£500	£1,000
B. Annual amount (9 per cent.) saved from income to establish annuity fund	18	45	90
C. Available for immediate use	182	455	910
D. Fund which will in 40 years be established by accumulation of savings (B), with interest at 5 per cent.	2174·38	5435·99	10871·98
E. Annuity purchaseable therewith payable during life to both (or the survivor of two) persons each aged 60 years	£183·5	£485·65	£917·31

Thus the heads of a household of average numbers could during the 40 years of active life from 20 to 60 years of age make, under average conditions, suitable provision for old age, and secure a permanent and assured income for the remainder of their lives, however much their days be prolonged, if they set aside rather less than 9 per cent. of their average net annual income. An income averaging **£500** per annum from personal exertion will enable the owner to make during the earning period adequate provision and secure for the whole of his life and that of his wife, if she survive him, a standard of living equal to that of a person receiving a permanent and assured income of **£455** from the produce of property.

If it be contended that this involves ideal prudence under ideal conditions, it may be replied that the conditions are **average** conditions, the basis is the **average** net annual income, after allowing for sickness and lack of employment, and that it applies only to persons who have a taxable surplus, which predicates a margin for saving. The ideal prudence in this case is no greater than the ideal self-restraint and prudence of the other, who, it is assumed, neither loses in speculation or by depreciation of values nor spends in indulgence any of his capital fund. But it may be contended that this applies only if the earner reach the retiring age and that if death take place in the earlier years the provision for his dependants being the accumulations of savings to date only would be small.

25. Substantial provision may be made for the widow and children in event of the husband's death before the retiring age if the question be approached in another way : the two following are based upon the table of rates issued by a leading Australian Life Assurance Association :—

(1) A participating endowment assurance policy payable at 60 years of age or at death if that take place previously, the accumulated amount of which at the retiring age will suffice with reversionary bonuses to purchase annuities in favour of husband and wife yielding during their joint lives the same average income as they were able to spend during the earning years, and in the event of the husband's earlier death a sum which would vary from rather more than half that amount in the first year of cover, and approach the full amount as the retiring age is approached—such endowment assurance policy could be purchased at a premium

equivalent to about 13 per cent. of his average annual income during the earning period. For example, taking the same three cases as before, the protection afforded is briefly—

A. Average annual income from personal exertion during active years—after making allowance for sickness, lack of employment, &c.	£200	£500	£1,000
F. Annual premium at 13 per cent. of income, saved to purchase an endowment policy as under	26	65	130
G. Available for immediate use	174	435	870
H. (*a*) If the assured die in the first year the policy assures immediate payment of ..	1,023	2,558	5,116
(*b*) The amount payable will by reversionary bonus additions increase yearly during the life of the assured till at the retiring age (60 years) it will be ..	2,013	5,032	10,065
J. There may then with this fund be purchased two annuities in favour of husband and wife respectively, each aged 60 years, and yielding during their joint lives ..	£174	£436	£872

which is almost exactly equal to the average spending capacity (G) during the earning years.

(2) If the income earning period be taken to end at 65 years of age the benefits are less costly and the annual premium smaller. Instead of 13 per cent. as in the above example a premium equal to less than 10 per cent.—a shade over 9½ per cent.—of the average income will suffice. The figures are :—

A. Average annual income from personal exertion during active years—after making allowance for sickness, lack of employment, &c.	£200	£500	£1,000
K. Annual premium at 9½ per cent. of income, saved to purchase an endowment policy as under	19	47·5	95
L. Available for immediate use	181	452·5	905
M. (*a*) If the assured die in the first year the policy assures immediate payment of ..	815	2,038	4,076
(*b*) The amount payable will by reversionary bonus additions increase yearly during the life of the assured till at the retiring age (65 years) it will be ..	1,748	4,370	8,740
N. There may then with this fund be purchased two annuities in favour of husband and wife respectively, each aged 65 years, and yielding during their joint lives ..	£180	£449	£898

NOTE.—The provision in J. and N. is such that the survivor of the two annuitants will receive half the amounts respectively indicated after the failure of the first life.

26. These figures are not submitted as the basis of a scheme of national insurance but as a means of measuring with reasonable approximation the degree of differentiation which in practice may be regarded to exist between earned and unearned incomes. To the young householder on the threshold of life they may look like counsels of perfection but they serve their present purpose if falling short of conclusive proof they indicate with some approach to accuracy the average degree of differentiation. It does not exceed 13 per cent. and is probably nearer 9 per cent. which is indeed almost exactly the degree (10 per cent.) recommended by the British Commission of 1920. Neither your Commissioners nor the members of the British Commission have produced any argument to impugn this or to support any other degree as a more accurate measure

27. **Examination of Operation of Estate Duties.**—But this makes no allowance for the encroachment on the income from property in consequence of the Estate Duty, as set out in Schedule No. 1, and being part of the general system of taxation it should not be ignored. Inherited property taxed under the Estate Duty has already in all cases paid duty to an amount far in excess of the 9 and 13 per cent., as the figures in Schedule No. I establish. Very small estates need not be considered, for the incomes from them standing along are not taxable. On estates the annual income from which is above the point of general exemption from Income Tax, the total tax paid by the income from property is in excess of that paid by incomes from personal exertion by from 37 to 65 per cent. The degrees of differentiation established by the Estate Duty are already—without any differentiation in the Income Tax Act—considerably over 9 and 13 per cent.

28. **Life Interests.**—There are some cases of incomes from property which have not been submitted to Estate Duty, such as the life interest mentioned by Sir Josiah Stamp and referred to in paragraph 11 of this Reservation, but they are so few in number and small in value that the expense of segregating and specially taxing them would probably not be warranted—but, if it were deemed expendient, they could be dealt with as exceptional cases, just as other sources of income are by necessity treated specially under the present Act.

29. **Taxation of Property Acquired by the Taxpayer.**—A larger and much more important source of income which has not paid Estate Duty is that derived by taxpayers from the investment of their own savings, and, with regard to these, I agree with, and cannot do better than repeat, the views of a former Chairman of the British Board of Inland Revenue :—

> " The effect of a variation of the Income Tax would not be quite the same thing as an increase in the Death Duties. For it would impose a special tax on savings while still in the hands of the person who made the savings, whereas the Death Duties defer any special taxation (other than such as arises under the Stamp Duties) until the savings pass to some one other than the saver. Whether savings should be specially taxed in the hands of the saver hardly falls within the region of a discussion relating solely to practicability. But here, practicability and expedience are so difficult to separate that it may be legitimate to ask why income that results from the double effort of earning and saving should be regarded as deserving of more onerous treatment than income resulting from the single effort of earning. It would surely be very inconsistent if the State, after encouraging savings by means of Post Office and other Savings Banks, were to penalize the income derived from such savings. . . . The principle is the same in whatever class and to whatever amount savings may be made, so long as they result, not from the operation of unequal laws, but from the successful utilization of equal opportunity open to all, and from the exercise of foresight and prudence."

30. Some other incomes are now derived from properties which, though inherited, have not paid Federal Estate Duty, because when these properties passed into the present holders' hands there was no Estate Duty Act in force. Under the law property and all the rights appertaining to it passed without interference—so far as the Federal Authorities were concerned—to the inheritor, and, the law as it stood having been complied with, he should be established in the same full enjoyment as his predecessor in title. The Income Tax Act should not be used as a means of imposing a retrospective Estate Duty prior to the date when these duties came into force. These properties, subject in all respects to the law as it stood at the time of transmission, should be regarded as in the same category as properties which under the law as subsequently altered have likewise complied with the law as it stands and borne Estate Duty. If in more affluent days the Estate Duties, which now reach 15 per cent., be reduced by, say, a third, and range to 10 per cent., will any privileges or exemptions from Income Tax be allowed to those inheritors whose estates paid toll at the higher rate? To any such proposal reply would be—Duty was collected at the rates current at the time of transmission, and no allowance can be made in respect of a subsequent reduction. The same attitude should be taken towards estates which passed from the dead to the living prior to 21st December, 1914. Since that date all estates exceeding **£1,000** in value come under the Federal Estate Duties Act.

31. While, therefore, I am of opinion that the principle of differentiation is one which should be retained in the **system** of taxation, I am also of opinion that differentiation in favour of income from personal exertion and against income from property should **not** be retained in the Income Tax Act.

32. **Objections.**—An attempt is made in paragraph 310 of the Report to depict the modest income-earner toiling and moiling for 40 years to secure an annuity for fourteen or eleven years. This is over-drawn—the object attainable is an annuity fixed in amount and certain in payment from the sixtieth year throughout the whole period of life, however extended. The comparison is distorted in the same paragraph by assuming that the property-owner dies within a few months of entering into enjoyment and taking out a policy of insurance. " The property-owner, by setting aside 2.1 per cent. for possibly one year only," &c. If this should happen, all that need be said is that he made an excellent bargain with the Underwriters, and it may also be said with equal confidence that, if this were a common experience, the Underwriters would soon refuse business of this kind. That they continue in the business and make profits from it shows such premature collapse to be extremely unlikely—so unlikely that experienced actuaries are prepared to accept a premium of £2 2s. 9d. as covering the risk of having to pay **£100** before another premium falls due. But even this extreme case tells against the imposing of differentiation in the Income Tax Act, for whereas in Schedule No. 1 it is assumed that the Estate Duty is payable once in thirty years, in this case Estate Duty would be payable twice in two years, and the percentage of excess as between Duty plus Income Tax on the income from property and the tax on income from personal exertion is much greater than the figures of the Schedule. If such an experience were frequent, the argument against Differentiation in the Income Tax Act in favour of earned incomes becomes still stronger.

33. **Estate Duty considered as Anticipated Income Tax.**—Against regarding Estate Duty as a deferred Income Tax it is pleaded (paragraph 312) that " the person who provides the annual insurance payments can never be the actual payor of the Estate Duty." Death relieves him of that worry, but he is not while alive relieved of the desire to leave to his children a capital estate equal in value to the estate inherited by himself. It is not material, from the revenue point of view, however, who pays the duty, so long as it is paid by some one, but this objection raises the question of incidence. By whom are the death duties paid? and an even stronger case presents itself when, instead of treating the Estate Duty as *deferred* Income Tax (which, as mentioned in paragraph 21 of this reservation, under-states, in many cases seriously, the burden of the tax), it is treated as an *anticipated* or *commuted* Income Tax. In this reservation the weaker case (itself strong enough to show that there is no need for differentiation in an income tax in favour of income from personal exertion) is purposely stated first as paving the way for the stronger arguments which follow, when the Estate Duty is treated—and this is the more correct course—as *commuted* Income Tax.

34. In the Report which he made to the Special Committee of 1906 (referred to in paragraph 12 hereof), Sir Henry Primrose wrote :—

> " For the purpose of the calculation of the annual tax on property which would be equivalent to the present occasional taxes on transmission of property at death, it is desirable as a preliminary step to endeavour to determine the incidence of this tax. The Estate Duty has sometimes been regarded as a deferred Income Tax on the holder of property, payable at death, but this description, intelligible enough in the earlier years of the tax, while yet it has failed to touch the majority of existing estates, appears to the Board of Inland Revenue to give but a very imperfect view of the burden of the tax when its operation has been fully developed. The full measure of the tax can only be fully appreciated by looking at its effect on the person who succeeds to property on which Estate Duty has been paid. What the State does is at recurrent intervals to cut a slice out of the capital value of realized property. It is therefore in its essence a tax upon persons who inherit, inasmuch as it diminishes the value of their inheritance by the share which the State takes for itself, as a condition of permitting the transmission of inheritance. The share of the State, like any other share, might be in the form of a capital sum or of an annuity. Under the present law it takes the form of a capital sum, and what we want to ascertain is the annuity which would correspond to the capital sum in each case. If the capital sum were levied once only for all time the burden on the Estate would be represented by a perpetual annuity corresponding to the slice taken out of the estate."

35. Let us interrupt to illustrate this by means of examples dealing with estates of moderate size, in which the rates prevailing in the Commonwealth are used. A very small estate is not shown, because, while it may be liable to Estate Duty, there may be no Income Tax at all, seeing the income from it may not reach the exemption allowed by that Act. Such a case is therefore unsuitable for comparison. Very large estates are also not shown, because they are exceptional, and attention is therefore focussed on estates of moderate size, the transmission of which is more frequent.

36. **Examples.**—(1) A testator bequeaths to a beneficiary (B) all his property, worth (say) just over **£10,000,** on which the Federal Estate Duty at **£2 10s. 0d.** per cent. amounts to **£280.** Assuming 5 per cent. to be the earning power of money, B's annual income, which would have been **£500,** is because of the duty paid reduced to **£486.** The depletion is equivalent to a perpetual annual tax of **£14.** The tax on an income of **£500** received from personal exertion by a single person is under the present Federal scale £16 7 7
The personal exertion tax on an income of £486 is £15 11 10
which added to the 14 0 0

makes B's contribution to the revenue equal to an annual tax of £29 11 10

The effective rate of tax on the one is 7·862 pence and on the other 14·004 pence, that is, 78 per cent. in excess of the tax payable on an income of **£500** from personal exertion.

Example (2). The comparison is more striking in the more usual case of an estate left by a testator to a number of beneficiaries. For example, an estate worth just over **£40,000** is left in equal shares of **£10,000** each to children A and B and to other relatives C and D.

On the **£10,000** inherited by A (or B) the Federal Estate Duty at **£5 17s. 4d.** per cent. is **£586 13s. 4d.** Again, assuming 5 per cent. to be the earning power of money, A's annual income, which would have been **£500,** is, because of the duty paid, reduced to **£470 13s. 4d.,** the duty imposing upon A a differentiation equivalent to a perpetual annual tax of **£29 6s. 8d.** Applying the same comparisons as in the preceding example, the tax on **£500** personal exertion income is £16 7 7
The personal exertion tax on an income of **£470** is £14 14 6
which added to the 29 6 8

makes A's contribution to the revenue equal to an annual tax of £44 1 2

The effective rate of tax on the one is 7·862 pence, and on the other 21·148 pence, that is, 169 per cent. in excess of the tax payable on an income of **£500** from personal exertion.

Example (3). On the **£10,000** inherited by C (or D), the difference is more noticeable. The Federal Estate Duty at **£8 16s.** per cent. is **£880.** C's annual income, which at 5 per cent. would have been **£500,** is reduced to **£456,** the Duty imposing upon C a Differentiation equivalent to a perpetual annual tax of **£44.** Applying the same comparison as before, the tax on a personal exertion income of **£500** is £16 7 7
The personal exertion rate on an income of **£456** is £13 19 4
which added to the 44 0 0

makes C's contribution to the revenue equal to an annual tax of £57 19 4

The effective rate of tax on the one is 7·862 pence, and on the other 27·824 pence, that is, 254 per cent. in excess of the tax payable on an income of **£500** from personal exertion.

Example (4). If the estate be larger, the effects are more impressive. If an estate worth, say, **£72,000** be left in equal shares of **£12,000** to each of five children and a brother, the Federal Estate Duty at 10 per cent. is on each child's share **£1,200.** The child's income, which at 5 per cent. would have been **£600,** is reduced to **£540,** the Duty imposing on him a Differentiation equivalent to a perpetual annual tax of **£60.** Applying the same comparisons as before, the personal exertion rate on an income of **£600** is £22 7 11
The personal exertion rate on an income of **£540** is £19 5 10
which added to the 60 0 0

makes his contribution to the revenue equal to an annual tax of £79 5 10

The effective rate of tax on the one is 8·9578 pence, and on the other 31·716 pence, that is, 256 per cent. in excess of the tax payable on an income of **£600** from personal exertion.

Example (5). The Differentiation in the case of the brother is greater. On his inheritance of **£12,000** the Duty at 15 per cent. is **£1,800.** His income, which at 5 per cent. would have been **£600,** is reduced to **£510,** the Duty imposing upon him a Differentiation equivalent to a perpetual annual tax of **£90.** Applying the same comparisons as before, the personal exertion rate of income of **£600** is £22 7 11
The personal exertion rate on **£510** is £17 16 3
which added to the 90 0 0

makes his contribution to the revenue equal to an annual tax of £107 16 3

The effective rate of tax on the one is 8·9578 pence, and on the other 43·109 pence, that is, 381 per cent. in excess of the tax payable on an income of **£600** from personal exertion.

37. These examples may be tabulated :—

Example.	1.	2.	3.	4.	5.
A. Value of estate	£10,000	£40,000	£40,000	£72,000	£72,000
B. Inheritor's share	£10,000	£10,000	£10,000	£12,000	£12,000
C. Duty paid on share	£280	£587	£880	£1,200	£1,800
D. Net share left	£9,720	£9,413	£9,120	£10,800	£10,200
E. Income from B	£500	£500	£500	£600	£600
F. Tax on E	£16 7s. 7d.	£16 7s. 7d.	£16 7s. 7d.	£22 7s. 11d.	£22 7s. 11d.
G. Income from D	£486	£470	£456	£540	£510
H. Tax on G	£15 11s. 10d.	£14 14s. 6d.	£13 19s. 4d.	£19 5s. 10d.	£17 16s. 3d.
I. Interest on duty (C)	£14	£29 6s. 8d.	£44	£60	£90
J. Total (H + I)	£29 11s. 10d.	£44 1s. 2d.	£57 19s. 4d.	£79 5s. 10d.	£107 16s. 3d.
K. Effective rate of tax on E in pence ..	7·862	7·862	7·862	8·9578	8·9578
L. Total effective rate per £1 (H + I) in pence	14·004	21·148	27·824	31·716	43·109
If F (the tax payable at personal exertion rates on the income of the estate intact) equals 100	100	100	100	100	100
J (the aggregate amount equivalent to estate duty and tax on income of the residue) is equal to	178	269	354	356	481

38. **Estate Duty considered as Commuted Income Tax.**—In these examples the amounts paid as Estate Duty have been treated for simplicity's sake as inexhaustible principal, and the annual usufruct only has been taken into account as equivalent to Income Tax. Estate Duties, however, though less regular in their visits than Income Tax, travel in an orbit of their own, and return at uncertain intervals, and it would be more accurate to treat the fund as exhausting itself over the average interval of successions—generally taken as 30 years—that is, to treat the Estate Duty as equivalent to thirty commuted annual payments. Consequently, Sir Henry continues—

> "But the levy is not single. It is recurrent—at intervals of which the average is reckoned at 30 years. Therefore, the inheritor of an estate, unless he is to contemplate the gradual whittling away of the property during succeeding generations, must charge himself with the task of replacing the slice by which it has been diminished on his succession. Thus an inheritor has to suffer not only the loss of income from the slice taken out of his inheritance, but has also, so to speak, to establish a sinking fund which will replace the slice in thirty years."

39. Dealt with in this way, the results more accurately express the true position, and the Differentiation is more marked. The following Schedule shows the examples which were dealt with as deferred Income Tax in Schedule I (paragraph 19), and the foregoing five examples, all treated as commuted Income Tax on the avergae interval of 30 years. The twelve examples in the first Table assumed that in each case the estate undivided was bequeathed to one beneficiary—in which case the relative duty would be lighter than if an inheritance of the same value were received as part of a larger estate. Such transmissions are comparatively rare, and the more customary division of an estate is among children and other relatives or strangers. Examples showing the operation of Duty in such cases have, therefore, been included, the same cases as before being now used to illustrate four distinct transmissions, viz. :—

Where the whole estate is inherited by one person—

(*a*) a wife or a lineal descendant ;
(*b*) a person other than a wife or lineal descendant.

Where the whole estate is divided into four shares, of which one or more shares are inherited by—

(*c*) a wife or a lineal descendant ;
(*d*) a person other than a wife or lineal descendant.

One estate, No. 11, valued at **£72,000,** is shown as divided into six shares.

TABLE III.—Example showing in column 5 the annual payment for thirty years, which, commuted at 5 per cent., would equal the Federal Estate Duty paid by the inheritor and in column 8 the resulting effect in total annual tax.

No.	1. Total Value of Estate. —— Just over—	2. Total Value of Estate devolving upon Taxpayer.	3. Annual Income at 5 per cent. from share of Estate (intact).	4. Excise Duty. Amount paid by Inheritor on his share of Estate.	5. Excise Duty. Equal to the following sums payable annually for 30 years commuted at 5 per cent.	6. Income Tax at P.E. Rate payable by Inheritor of Income from share of Estate (less Duty paid).	7. Total Annual Payment or equivalent (Column 5 plus 6).	8. Income Tax at P.E. Rate payable on Income shown in Column 3.	9. Excess of Column 7 over Column 8.	10. Effective Rate of Tax in Column 7 p r £1 of gross Annual Income shown in Column 3.	11. Effective Rate of Tax in Column 8 payable on whole Income if derived from Personal Exertion.	12. If the amounts in Column 8 and the Rates in Column 11 be each equal to 100, the amounts in Column 7 and Rates in Column 10 are equal to—
	£	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	Pence per £1.	Pence per £1.	
1 A—D	3,000	3,000	150 0 0	28 0 0	1 16 6	1 6 1	3 2 7	1 7 6	1 15 1	5·	2·2	227
1 B—R	3,000	3,000	150 0 0	42 0 0	2 14 8	1 5 7	4 0 3	1 7 6	2 12 9	6·42	2·2	292
1 C—D	3,000	750	37 10 0	7 0 0	0 9 1	Nil	0 9 1	Nil	0 9 1	2·9	Nil	..
1 D—R	3,000	750	37 10 0	10 10 0	0 13 8	Nil	0 13 8	Nil	0 13 8	4·37	Nil	..
2 A—D	5,000	5,000	250 0 0	60 0 0	3 7 10	4 11 7	7 19 5	4 14 1	3 5 4	7·652	4·516	169
2 B—R	5,000	5,000	250 0 0	90 0 0	5 1 8	4 10 4	9 12 0	4 14 1	4 17 11	4·216	4·516	204
2 C—D	5,000	1,250	62 10 0	15 0 0	0 16 11	Nil	0 16 11	Nil	0 16 11	3·24	Nil	..
2 D—R	5,000	1,250	62 10 0	22 10 0	1 5 5	Nil	1 5 5	Nil	1 5 5	4·88	Nil	..
3 A—D	8,000	8,000	400 0 0	128 0 0	8 6 6	10 16 3	19 2 9	11 2 8	8 0 1	11·482	6·68	172
3 B—R	8,000	8,000	400 0 0	192 0 0	12 9 10	10 13 0	23 2 10	11 2 8	12 0 2	13·885	6·68	207
3 C—D	8,000	2,000	100 0 0	32 0 0	2 1 8	Nil	2 1 8	Nil	2 1 8	5·	Nil	..
3 D—R	8,000	2,000	100 0 0	48 0 0	3 2 6	Nil	3 2 6	Nil	3 2 6	7·5	Nil	..
4 A—D	10,000	10,000	500 0 0	186 13 4	12 2 10	15 17 4	28 0 2	16 7 7	11 12 7	13·444	7·862	171
4 B—R	10,000	10,000	500 0 0	280 0 0	18 4 3	15 11 10	33 16 1	16 7 7	17 8 6	16·226	7·862	206
4 C—D	10,000	2,500	125 0 0	46 13 4	3 0 8	0 11 11	3 12 7	0 13 3	2 19 4	6·968	1·272	547
4 D—R	10,000	2,500	125 0 0	70 0 0	4 11 1	0 11 0	5 0 1	0 13 3	4 6 10	9·608	1·272	755
5 A—D	15,000	15,000	750 0 0	380 0 0	24 14 5	29 16 9	54 11 2	30 19 10	23 11 4	17·458	9·9173	176
5 B—R	15,000	15,000	750 0 0	570 0 0	37 1 7	29 4 9	66 6 4	30 19 10	35 6 6	21·221	9·9173	214
5 C—D	15,000	3,750	187 10 0	95 0 0	6 3 7	2 7 5	8 11 0	2 10 2	6 0 8	10·944	3·2106	340
5 D—R	15,000	3,750	187 10 0	142 10 0	9 5 5	2 5 10	11 11 3	2 10 2	9 1 1	14·8	3·2106	460
6 A—D	20,000	20,000	1,000 0 0	640 0 0	41 12 8	45 12 6	87 5 2	47 19 9	39 5 5	20·942	11·517	181
6 B—R	20,000	20,000	1,000 0 0	960 0 0	62 9 0	44 9 4	106 18 4	47 19 9	58 18 7	25·66	11·517	222
6 C—D	20,000	5,000	250 0 0	160 0 0	10 8 2	4 7 4	14 15 6	4 14 1	10 1 5	14·184	4·516	314
6 D—R	20,000	5,000	250 0 0	240 0 0	15 12 3	4 4 10	19 17 1	4 14 1	15 3 0	18·94	4·516	419
7 A—D	30,000	30,000	1,500 0 0	1,360 0 0	88 9 4	85 4 3	173 13 7	91 19 7	81 14 0	27·788	14·7166	188
7 B—R	30,000	30,000	1,500 0 0	2,040 0 0	132 14 2	81 18 5	214 12 7	91 19 7	122 13 0	34·341	14·7166	233
7 C—D	30,000	7,500	375 0 0	340 0 0	22 2 4	9 1 3	31 3 7	9 18 10	21 4 9	19·95	6·3626	313
7 D—R	30,000	7,500	375 0 0	510 0 0	33 3 6	8 15 11	41 19 5	9 18 10	32 0 7	26·86	6·3626	422
8 A—D	40,000	40,000	2,000 0 0	2,346 13 4	152 13 0	134 11 4	287 4 4	149 5 11	137 18 5	34·466	17·9155	192
8 B—R	40,000	40,000	2,000 0 0	3,520 0 0	228 19 7	127 12 0	356 11 7	149 5 11	207 5 8	42·79	17·9155	223
8 C—D	40,000	10,000	500 0 0	586 13 4	38 3 3	14 14 6	52 17 9	16 7 7	36 10 2	25·386	7·862	323
8 D—R	40,000	10,000	500 0 0	880 0 0	57 4 11	13 19 4	71 4 3	16 7 7	54 16 8	34·102	7·862	434

TABLE III.—*continued.*

No.	1. Total Value of Estate. —— Just over—	2. Total Value of Estate devolving upon Taxpayer.	3. Annual Income at 5 per cent. from share of Estate (intact).	4. Excise Duty. Amount paid by Inheritor on his share of Estate.	5. Excise Duty. Equal to the following sums payable annually for 30 years commuted at 5 per cent.	6. Income Tax at P.E. Rate payable by Inheritor of Income from share of Estate (less Duty paid).	7. Total Annual Payment or equivalent (Column 5 plus 6).	8. Income Tax at P.E. Rate payable on Income shown in Column 3.	9. Excess of Column 7 over Column 8.	10. Effective Rate of Tax in Column 7 per £1 of gross Annual Income shown in Column 3.	11. Effective Rate of Tax in Column 8 payable on whole Income if derived from Personal Exertion.	12. If the amounts in Column 8 and the Rates in Column 11 be each equal to 100 the amounts in Column 7 and Rates in Column 10 are equal to—
	£	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	Pence per £1.	Pence per £1.	
9 A—D	50,000	50,000	2,500 0 0	3,600 0 0	234 3 8	192 19 6	427 3 2	219 18 11	207 4 3	41·007	21·1148	194
9 B—R	50,000	50,000	2,500 0 0	5,400 0 0	351 5 7	187 4 4	538 9 11	219 18 11	318 11 0	51·696	21·1148	244
9 C—D	50,000	12,500	625 0 0	900 0 0	58 10 11	21 2 7	79 13 6	23 14 11	55 18 7	30·595	9·1184	335
9 D—R	50,000	12,500	625 0 0	1,350 0 0	87 16 5	19 13 11	107 10 4	23 14 11	83 15 5	41·286	9·1184	452
10 A—D	60,000	60,000	3,000 0 0	5,120 0 0	333 1 4	259 5 3	592 6 7	303 18 6	288 8 1	47·386	24·314	194
10 B—R	60,000	60,000	3,000 0 0	7,680 0 0	499 11 10	238 4 10	737 16 8	303 18 6	433 18 2	59·026	24·314	242
10 C—D	60,000	15,000	750 0 0	1,280 0 0	83 5 4	27 3 7	110 8 11	30 19 10	79 9 1	35·342	9·9173	356
10 D—R	60,000	15,000	750 0 0	1,920 0 0	124 17 11	25 7 0	150 4 11	30 19 10	119 5 1	48·079	9·9173	494
11 A—D	72,000	72,000	3,600 0 0	7,200 0 0	468 7 4	348 19 5	817 6 9	422 5 11	395 0 10	54·489	28·153	193
11 B—R	72,000	72,000	3,600 0 0	10,800 0 0	702 11 0	314 18 0	1,017 9 0	422 5 11	595 3 1	67·83	28·153	241
11 C—D	72,000	12,000	600 0 0	1,200 0 0	78 1 3	19 5 10	97 7 1	22 7 11	74 19 2	38·941	8·9583	434
11 D—R	72,000	12,000	600 0 0	1,800 0 0	117 1 10	17 16 3	134 18 1	22 7 11	112 10 2	53·961	8·9583	602
12 A—D	80,000	80,000	4,000 0 0	8,000 0 0	520 8 3	422 5 11	942 14 2	511 17 6	430 16 8	56·562	30·7125	184
12 B—R	80,000	80,000	4,000 0 0	12,000 0 0	780 12 4	380 14 2	1,161 6 6	511 17 6	649 9 0	69·679	30·7125	227
12 C—D	80,000	20,000	1,000 0 0	2,000 0 0	130 2 1	40 15 10	170 17 11	47 19 9	122 18 2	41·015	11·517	356
12 D—R	80,000	20,000	1,000 0 0	3,000 0 0	195 3 1	37 7 10	232 10 11	47 19 9	184 11 2	55·811	11·517	484
13 A—D	100,000	100,000	5,000 0 0	10,000 0 0	650 10 3	635 16 11	1,286 7 2	773 2 10	502 4 4	61·745	37·1109	166
13 B—R	100,000	100,000	5,000 0 0	15,000 0 0	975 15 5	572 3 10	1,547 19 3	773 2 10	764 16 5	74·302	37·1109	200
13 C—D	100,000	25,000	1,250 0 0	2,500 0 0	162 12 7	57 13 1	220 5 8	68 6 4	151 19 4	42·29	13·1168	322
13 D—R	100,000	25,000	1,250 0 0	3,750 0 0	243 18 10	52 14 5	296 13 3	68 6 4	228 6 11	56·91	13·1168	433

40. It may be convenient if the comparative results of these examples be tabulated thus :—

If in each case the effective rate of income tax on the whole income (column 11) be 100 the effective rate of the total annual equivalent of estate duty and income tax paid by the inheritor (column 10) on the several Estates inherited is as follows :—

Total Value of Estate. Just over—	If Estate is inherited by— One Person— Who is a lineal descendant. A.	One Person— Who is not a lineal descendant. B.	Four Persons— In the case of an inheritor who is a lineal descendant. C.	Four Persons— In the case of an inheritor who is not a lineal descendant. D.
3,000	227	292	No Income Tax	
5,000	169	204	No Income Tax	
8,000	172	207	No Income Tax	
10,000	171	206	547	755
15,000	176	214	340	460
20,000	181	222	314	419
30,000	188	233	313	422
40,000	192	223	323	434
50,000	194	244	335	452
60,000	194	242	356	484
80,000	184	227	356	484
100,000	166	200	322	433
Ranging	from 166 to 227	from 200 to 292	from 313 to 547	from 419 to 755
	One Person—		Six Persons—	
72,000	193	241	434	602

41. **Further Considerations.** One would think this were differentiation enough, but even yet the whole has not been told, for

(1) Of the 52 examples tabulated, 26 are estates which are assumed to pass from the holder to a single beneficiary—an unusual case—whereas most estates pass into the hands of several beneficiaries. This involves a noticeable alteration in the incidence of the taxes and the comparison between the total levy on property incomes with that on personal exertion incomes. The other 26 examples where the estates are left to four (in one case, six) beneficiaries are most closely typical of actual experience. In cases when wider dispersals are made the rate of estate duty is not reduced but the rate of income tax on the less income of the smaller shares is also less, and the degree of differentiation is substantially increased. Case No. 11 illustrates this.

(2) It has been assumed in each of these cases that the inheritor is a single person without dependant. If he were married or had a dependant the Estate duty would still be charged at the same rate, but the taxes on his own and the contrasted incomes would be reduced because of the joint action of an increase of the exemptions allowable and the lowering of the range of the incomes. If the inheritor be married or have a dependant the contrasting figures in column 12 would be increased.

(3) Numerous items are in the capital passing at death and taxable for Estate Duty that have been wholly or partially unproductive of income liable to Income Tax and some of these may continue unproductive in the hands of the inheritors, for example :—

Cash in house or in bank at time of death.
Idle land.
Insurances.
Pictures, statuary, jewellery.
Libraries and other household goods.
Expectant interests.
Income due, but not yet collected.

All of these swell the value of the estate on which duty is paid and increase the degree of differentiation.

(4) The capital value of the estate may also (if the deceased were domiciled in Australia) include personal property in other countries, the income from which is not subject to tax in Australia, but the whole of the personal property swells the estate and increases the Estate Duty payable here.

It is evident that the comparisons shown in the Third Schedule—severe and striking as they are—are not exaggerated ; they are rather under-stated.

42. **Saving in Administrative Expenses.**—While cost of administration alone should not influence judgment on this question, it is worthy of notice that the adoption of one scale of rates and the exclusion of differentiation from direct action in the Income Tax Act would substantially reduce the worries of the taxpayer and the expense of administration. As to the latter the Federal Commissioner stated :—

> "The cost of collection per assessment may only be correctly appreciated after a minute study of the law under which the cost arises. The simpler the law the lower the cost of collection per assessment. The more complex the law (*e.g.*, differential treatment of various classes of income, whether by exemption of some and taxation of others, or difference in method of taxing different classes of income . . .) the more costly will each assessment be, owing to the increased necessity for vigilance by the Department to see that neither the taxpayer nor the revenue is unfairly dealt with."

A large number of the returns lodged now include both classes of income, and to some extent each becomes in effect two returns, for particulars of the income from property and its relative deductions have to be compiled separately by the taxpayer and dealt with separately by the Department from the income from personal exertion and its deductions. In many cases the general exemptions may cause one of them to be non-taxable, but at the initial stages each one of them must be treated in its two aspects. After all such returns have been weeded out, there still remain a large number which have to be assessed in respect of both classes of income. Of the total individual assessments (omitting assessments of Companies and Lotteries) made in 1918-19, 331,760 separate assessments were made in respect of composite incomes, and only 264,662 in respect of one class taxpayers. If one rate only obtained and differentiation disappeared from the Act, 165,880 of these assessments would not be required, in addition to the large saving—how large is not known to us—which would arise from the earlier blending of sources where now they have to be separately dealt with till one

proves on investigation to be non-taxable. On the other hand, the differential method recommended in the Report, which is in neither scheme nor measurement founded on sound principle, introduces a further element of complexity into the Act, for the differentiation diminishes at £1,500 with each £1 of income, and runs quite counter to the public demand for simplicity.

43. **Comparisons.**—These Tables and comparative statements and the comments thereon do not imply any criticism of the collecting of Duty on the estates of deceased persons, or the structure of the Estate Duty Act or its rates, which are accepted as they stand, and assumed to be just and reasonable. The object of the examples is solely to show the powerful action of these Duties when expressed in equivalent terms of Income Tax in creating well-defined and broad differentiation between the tax burdens borne by incomes from property and those borne by incomes from personal effort.

44. **Conclusion.**—For the alleged precariousness of earned incomes, as compared with the permanence of incomes from property, it is manifest that more than ample differentiation in favour of the former already exists in other parts of the system of taxation, and there is lacking any justification for accentuating it by making further differentiation in the Income Tax Act itself. Public demand (if it exists) for such a provision would be tempered if the action of the Estate Duties in burdening capital and the income from capital were realized. The conscience of the people, enlightened as to the facts, would indorse the inevitable conclusion from these figures that from the point of view of equitable dealing no substantial reason exists why differentiation in favour of incomes from personal exertion and against incomes from property should be made a general feature of an Income Tax Act in any system of taxation which includes a heavy tax on inheritance.

45. I therefore respectfully **Recommend** :—

(1) That the principle of differentiation be excluded from direct operation in the Income Tax Act, and that there be not observed in this Act any distinction as between one class of income and another.

(2) That all taxable incomes, whatever be their nature, be assessed in accordance with one scale of rates.

JOHN JOLLY.

GRADUATION.

RESERVATION.

While concurring in part of the Recommendations made in the Report on the above subject, we desire to submit the following statement :

2. **Extent of Concurrence in Recommendations of Report.** We concur in the Recommendations of the Report to the extent of—

(*a*) The adoption of one scale of rates instead of the two scales now in force for personal exertion and property respectively.

(*b*) The adoption of a straight line progression, with regular increases of rate as the income rises. (This, indeed, is already in force in the Commonwealth Personal Exertion Scale, but the fraction chosen for the progressive increase is an inconvenient one.)

(*c*) The adoption of a commencing rate of **5d.** (There is no special principle involved in the recommendation of this figure, but it is the present commencing rate—it appears to us a reasonable rate—it represents very closely the average of the commencing rates of all the State Income Taxes—it appears to be suitable for present Revenue needs—and taxpayers have become accustomed to it. We wish to be understood, however, as concurring with this commencing rate on the understanding that any increase or decrease of that rate shall normally be made only as part of a percentage movement up or down of the whole line of progression. See paragraph 6.)

3. **Desirable Characteristics of a Line of Progression.**—The first essential, we consider, is the regular movement of increase with each successive £1 up to the point where the gradient must be reduced, because (if for no other reason) it is considered that to continue it would tend to check enterprise and dry up the sources of income. The characteristic of regular increases is common to the scale prescribed by the present Act in relation to personal exertion incomes and to the scale recommended in the Report. The scale dealt with below (paragraph 5) is also of precisely the same type. The most important of the remaining characteristics of any decimal scale of graduation is simplicity. The highest practical test of simplicity in this connexion is that the fractional parts of a penny represented by the decimal scale shall also be capable of expression as common fractions in terms of a coin of the realm. There are only two scales which comply with this condition, viz., one which increases at the rate of **½d.** per **£100** (which is the scale recommended in the Report) and one which increases at the rate of **1d.** per **£100.** The latter scale is cited in the Report (paragraph 332), but apparently for the purpose of underlining the importance (which may easily be exaggerated) of considering the rate applicable to the highest £1 at any point of income, as well as the average rate over the whole of the income.

4. **Revenue Necessity for Frequent Change of Rates.**—The experience of the movements which have become necessary under the present Commonwealth personal exertion scale of rates and under the scales imposed by State statutes show that no scale is likely to produce the exact revenue required to meet the changing conditions of successive years without some adjustments. It is, therefore, necessary to look at any suggested scale of progression with this aspect clearly in mind. The scale of rates recommended in the Report, increasing by **½d.** per **£100**, or **1/200d.** per **£1,** is a much lower scale than that of the present personal exertion rates. It is, therefore, obvious that it could only be adopted at present, subject to a large percentage increase being made. In our opinion, that increase would not be less than 50 per cent. The result would be that the initial commencing rate would rise from **5d.** to **7½d.**, and the fractional increase throughout from **½d.** per **£100** to **¾d.** per **£100.** A scale commencing with **5d.** and ascending by **1/100d.** per **£1**, or **1d.** for each successive **£100**, would, if adopted without any percentage deduction, certainly produce more than the present revenue. That scale has the advantage over the one recommended in the Report of a higher degree of simplicity, but the suitability in other respects of either scale must, we submit, be judged chiefly in its relation to the incidence of the tax.

5. **Incidence of the Tax.**—The incidence of any proposed scale of graduation is, we submit, the most important issue to be considered. We have already pointed out that a rate of **5d.** plus **1/200d.** per **£1** would need probably at least 50 per cent. **increase** before it could be expected to produce approximately the present revenue. If, instead of adopting that scale, the scale based upon **5d.** plus **1/100d.** per **£1**, or **1d.** per **£100**, were adopted, a percentage **deduction** could no doubt be made, in order to produce the required revenue. If the lower line were **increased** by

50 per cent. and the higher line were **decreased** by 17½ per cent., the lines so swung upon their pivots would intersect—that, is, would carry the same rate of tax—at an income of **£4,500.** (See Graph Appendix No. 9.) The important difference between the two lines as thus respectively increased and decreased (assuming, as we think is the case, that they would produce approximately the same revenue) is in the effect each would have upon the distribution of tax-burdens below and above the point at which they intersect (**£4,500**). The lower line increased by 50 per cent. would have an initial or commencing rate of **7.5d.**, while the higher line reduced by 17½ per cent. would have an initial or commencing rate of **4.125d.**—that is, the commencing rate if the lower scale plus 50 per cent. were adopted would be about 84 per cent. higher than if the higher scale less 17½ per cent. were chosen. **This means that the adoption of the lower line, as recommended in the Report, would have the immediate effect of throwing a considerably increased burden upon lower incomes.** The final responsibility of determining where the heavier burden of taxation shall lie is, of course, not upon our shoulders, but we are concerned with attempting to make clear the effect of any change recommended, particularly with regard to the two lines in question, one or other of which must apparently be adopted, if it is desired to introduce—

(*a*) A decimal progression ;
(*b*) The simplest form of decimal progression, that is, one capable of expression also as a common fraction in terms of **½d.** or **1d.**

Of the two, the line expressible in terms of **1d.** is rather simpler, and, as we have already shown, to meet present needs it could be used by way of percentage **decrease**, thus somewhat diminishing the burden upon lower incomes, while the adoption of the lower line with its necessary percentage increase would have the opposite effect. A further fact bearing upon the question of incidence is that, if the Recommendations made in the Report under the heading "Differentiation" be adopted, incomes derived from property will be considerably relieved of tax, and this relief must necessarily be at the expense of incomes derived from personal exertion. In these days, when it is the exception for large businesses to be conducted otherwise than as Companies, it is reasonably certain that personal exertion incomes make up the larger part of the "lower" incomes—say, up to **£4,500**, the point at which it is recommended Differentiation should cease. It seems clear, therefore, that it is the lower incomes which would bear the larger part of the extra burden of which property incomes would be relieved.

6. **Adjustment by Alteration of Base.**—One of the modes of altering the weight of taxation suggested in the Report is that of an arbitrary deduction from or addition to the commencing rate, now **5d.**, independently of any percentage movement of the whole line of progression, and it may be said that by the use of this device the heavier incidence upon lower incomes which would be caused by the adoption of the line recommended in the Report might be at least partially overcome. We suggest that this mode of alteration is undesirable—it would cause an added complication—it would alter the character of the line of progression, which would cease to be a straight line—it is inconsistent with the major Recommendation and with the whole tenor of the Report—and, in our opinion, it is unnecessary. It may be added that it would render useless a Ready Reckoner based upon a line of regular progression.

CONCLUSIONS.

7. To comply with the very wide public demand for simplicity of graduation, the choice appears to lie between two forms and two only, viz., what is known as the Step System, briefly referred to in the Report (paragraphs 330 and 331) and the straight line progression (changing with each £1 of income) of parts of a penny, amounting in each **£100** either to **½d.** or **1d.** There are, we think, good reasons for preferring the straight line progression to the Step System, and, if the straight line be accepted, the choice is, we submit, between the two lines just mentioned. The advantage from the point of view of simplicity lies with the line moving by **1/100d.** for each £1 of additional income. **From the point of view of incidence of tax, if it is desired to diminish or not to increase the burdens upon the lower incomes, the line based upon the scale moving in a progression of 1/100d. per £1 should be preferred. If, on the other hand, it is desired to diminish or not to increase the burden upon higher incomes—those incomes, say, above £4,500, the point at which the Report recommends that Differentiation should cease—the line based upon the scale moving in a progression of 1/200d. per £1 should be preferred.**

8. This statement of the principal factor to be considered in the determination of the scale to be adopted is, in our opinion, sufficient to show that an unconditional recommendation of a particular scale is outside our function.

W. T. MISSINGHAM.
S. MILLS.

GRADUATION.

RESERVATION TO PART.

1. I accept the principles laid down in the Report as to the basis of graduation in Income Tax, but am unable to accept the expression of those principles as demonstrated in the line of graduation recommended therein.

2. An examination of the line proposed in the Report shows clearly that it is not pure graduation, but a combination of graduation and a flat rate. The commencing rate of 5d. being applied to all incomes becomes a flat rate on every £1 of income and the graduation is added to this flat rate. This is very unfair to the small incomes, for a flat rate is not equitable at all and could not be recommended, and the addition of a graduation does not remove the injustice of the flat rate.

3. The theory of diminishing utility (accepted in the Report) means that the taxable capacity of each succeeding £1 of income is greater than the preceding one. Therefore, if the difference in taxable capacity between the 10th and 11th £ of income is expressed by the graduated line (expressed in the report as ·005), then there is no reason why the difference of £1 at the commencement of taxable income should not be treated in a like manner. The first £ of taxable income is in the same relation to no taxable income as £11 of taxable income is to £10 of taxable income. In both cases the taxable capacity is £1 better than the other, and the rate of progression should be the same, or, if not the same, should be greater between the 10th and 11th £ than between £0 and £1. The method recommended in the report is equivalent to an advance from 0d. to 5d. on the first £ , and only ·005 difference on an additional £1 of income at any other point. The first £ of taxable income is, therefore, overloaded, and this makes the incidence of the tax harsh on the small incomes.

4. If the line of graduation commenced at 0 and was carried at whatever angle was necessary to obtain the necessary revenue no injustice could be done to any incomes, as each would bear its relative burden in accordance with requirements. If small revenue was required then the line would be nearer horizontal, and if large revenue was required the line would be more erect and necessarily take the greatest toll from the large incomes. The angle of the line would be determined by the amount of revenue required with equitable incidence in all cases. The line recommended in the Report will not produce the present revenue from Income Tax, and it will therefore be necessary to add a percentage of about 50 before the present revenue is reached, and this would mean an assumed taxable capacity of 7½d. in the first £ of income, thus accentuating the injustice to the small incomes.

5. In order to arrive at the line of graduation, it is necessary to arrive at what is considered the maximum taxable capacity on the last £ of income, and ascertain at what point of income this maximum should be taken in order to give the revenue required, then the line should be drawn from that point to zero.

6. Taking 10s. as the maximum taxable capacity on the last £ of income, it is estimated that the present revenue would be raised by making this operate at £6,000 and over, and the line would then run from £6,000 to 0 with the flat rate of 10s. applying to all income above £6,000 (see graph, Appendix No. 9). This line would make the graduation advance at the rate of ·02d. per increased £ of income, and the average rate would advance at the rate of ·01d., thus the average rate of tax on an income of £6,000 would be 60d. in the £1, and the average rate of tax on an income of £3,000 would be 30d.

7. As a line of graduation this would be exceedingly simple; the amount of taxable income divided by 100 giving the average rate of tax up to £6,000 of income, with a flat rate of 10s. in the £ above that mark. Thus the frequently voiced complaint of taxpayers regarding the complications of the present graduation would be met, as it would be only necessary to mark off two places of decimals in the taxable income, and the rate of tax would be shown, thus :—

Taxable Income.	Average Rate.
£500	5·00d.
£1,200	12·00d.
£1,536	15·36d.
£2,471	24·71d.

8. A comparison of this line of graduation with that recommended in the Report (plus 50 per cent.) is shown in a graph (Appendix No 9). It will be seen, on reference to this graph, that at £3,000 the average rate of tax is the same in both cases, the difference being that below the £3,000 point the line recommended in the Report (with 50 per cent. added) is more severe, while in the area above that point the line herein recommended is more severe.

9. The following is a comparative table showing the average rate of tax on the whole income, as well as the rate on the final £, under—

(1) The scale at present in the Commonwealth Act.
(2) The scale recommended in the Report, with 50 per cent. added (to secure the present revenue).
(3) The scale recommended in this Reservation.

Taxable Income.	1. Present Federal Act.				2. Report Recommendation.		3. Reservation.	
	Personal Exertion.		Property.		(5d. + ·005 + 50%).		(0·0d. + 0·01d.).	
	Average.	Final £.	Average.	Final £.	Average.	Final £.	Average.	Final £.
		£		£			d.	d.
100	5·7586	6·3922	6·0611	6·9917	8·25	8·9925	1	2
200	6·3984	7·672	7·0035	8·8741	9·0	10·4925	2	4
400	7·6781	10·2317	8·8883	12·6788	10·5	13·4925	4	8
600	8·9578	12·7874	11·2203	21·7627	12·0	16·4925	6	12
800	10·2375	15·3511	14·6691	28·0923	13·5	19·4925	8	16
1,000	11·5172	17·9108	17·9724	33·9564	15·0	22·4925	10	20
1,400	14·0766	23·0302	24·1422	44·5676	18·0	28·4925	14	28
2,000	17·9156	30·7092	32·3049	57·0925	22·5	37·4925	20	40
3,000	24·3141	43·5077	44·1823	76·8714	30·0	52·4925	30	60
4,000	30·7125	56·3061	54·2303	90·6212	37·5	67·4925	40	80
5,000	37·1109	69·1045	62·3179	98·3107	45·0	82·4925	50	100
6,000	43·5094	81·9030	68·6291	101·0237	52·5	97·4925	60	120
7,600	53·7469	102·375	75·7145	102·375	..	..	72	120
10,000	65·4176	102·375	82·1130	102·375	..	..	84	120
20,000	83·8963	102·375	92·2440	102·375	..	..	102	120
50,000	94·9835	102·375	98·3226	102·375	..	..	112·8	120
100,000	98·6793	102·375	100·3488	102·375	..	..	116·4	120

10. The following table shows the amount of tax payable by taxpayers under the methods above mentioned at the various stages of income :—

Taxable Income.	Present Federal Act.		Report.	Reservation.
	Personal Exertion.	Property.		
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
100	2 8 0	2 10 6	3 8 9	0 8 4
200	5 6 8	5 16 9	7 10 0	1 13 4
400	12 15 11	14 16 3	17 10 0	6 13 4
600	22 7 11	28 1 0	30 0 0	15 0 0
800	34 2 6	48 17 11	45 0 0	26 13 4
1,000	47 19 9	74 17 8	62 0 0	41 13 4
1,400	82 2 3	140 16 7	105 0 0	81 13 4
2,000	149 5 11	269 4 2	187 10 0	166 13 4
3,000	303 18 6	552 5 7	375 0 0	375 0 0
4,000	511 17 6	903 16 9	625 0 0	666 13 4
5,000	773 2 10	1,298 5 9	925 0 0	1,041 13 4
6,000	1,087 14 8	1,715 14 7	1,312 10 0	1,500 0 0
7,600	1,701 19 8	2,397 12 6	..	2,280 0 0
10,000	2,725 14 8	3,421 7 6	..	3,500 0 0
20,000	6,991 7 2	7,687 0 0	..	8,500 0 0
50,000	19,788 4 8	20,483 17 6	..	23,500 0 0
100,000	41,116 7 2	41,812 0 0	..	48,500 0 0

RECOMMENDATION.

11. **I recommend—**

1. That the line of graduation should commence from zero.
2. That the line be adjusted to revenue requirements by its angle.
3. That, as a graduated line of ·01 (average) rising to £6,000 taxable income would produce current revenue, same be adopted for present purposes.

M. B. DUFFY.

TAXATION OF INCOME OF AUSTRALIAN RESIDENTS DERIVED OUTSIDE AUSTRALIA.

RESERVATION.

1. With due deference to the opinions of my colleagues I am unable to agree unreservedly with the conclusions and recommendations of this section of the Report.

2. In the taxing Acts of the Commonwealth and the States of Australia, as in other important parts of the British Dominions, the scope of income tax has always been confined to incomes derived from a source within the geographical area controlled by the taxing authority. Not only has no evidence been adduced to support the extension of the tax to ex-territorial income, but the attitude of witnesses generally when asked to express an opinion on this topic was one of approval of the established practice of confining tax to income derived within the territory.

3. Even in Great Britain which, we are told, "was first in the field and taxed on the principles of residence, origin, control, and every other pretext it could invent, on the Donnybrook Fair principle 'see a head, hit it,'" there is a growing conviction that the taxing of ex-territorial income is weak in principle and embarrassing in practice, a conviction which has been intensified because of the higher rates now ruling and the greater attention directed to the subject.

4. The attitude of the British authorities when asked to abolish the taxing of the Dominion incomes of British residents was not a vindication of the justice of continuing the practice, but rather an admission that it was continued only because it was impossible to give up the revenue during the war, and promise was given of probable abandonment when revenue needs were less pressing. Generally the taxing of income both at the place of origin and at the place of residence is not advocated, and so far Australian States have without exception confined taxation to incomes originating in—"derived from a source in"—the State.

5. The Report asserts that the taxation of the incomes of Australians derived outside Australia does not possess "complete theoretical justification." With equal accuracy it might have said there are strong reasons, both theoretical and practical, against its adoption. If, as is stated in the Report, "the only justification for the suggested extension would be revenue necessity," its defence is poor indeed, akin to the plea of the petty larcenist, a repetition of the practice of extortion followed by capricious Governments without regard to the inequity of the burden cast upon the taxpayer, and opposed to the pursuit of justice, which is an outstanding feature of modern development in the theory of taxation.

6. If then such a tax is inherently unjust or is of such doubtful character that no attempt is made to establish its justice, it should be at once rejected, and need not be subjected to the tests quoted in para. 365 of the Report. These tests are to be applied to determine whether it would be expedient in practice to collect a tax which has previously been shown to be just in principle.

7. Without protracting the trial as to the inexpediency in practice to levy such a tax, and in this part of the indictment there are many counts, I feel compelled to condemn the proposal as one at variance with the principle which has always obtained in all Australian Income Tax Acts, both Commonwealth and State, a proposal of which the best that can be said is that it is of doubtful character.

8. Instead of the conditional Recommendation of the Report, there should, I submit, be substituted a Recommendation that the taxing of the incomes of Australian residents derived outside Australia be not admitted into the Australian Income Tax Acts unless and until it is in principle fully justified as ethically, politically, and economically sound, capable of efficient administration, and affording effective safeguards against evasion, and unlikely to create difficulties with other taxing jurisdictions.

JOHN JOLLY.

TAXATION OF PROFITS ARISING FROM SALES OF EXPORTS FROM AUSTRALIA.

RESERVATION.

We regret that we are unable to concur in the recommendations made in the Report under the above heading.

1. **Effect of Judicial Decisions.**—The Report gives particulars of Judgments of the Privy Council in Kirk's case and of the High Court in Meeks' case, but in our opinion fails to apply the principles laid down in those cases. The Act upon which the Judgments in those cases were given was the New South Wales Act, which in the wording of the material section is practically identical with the Commonwealth Act. The Judgments in those cases seem to lay down clearly :—

1. That, where a business undertaking located in Australia realizes profits on the sale abroad of goods originating in Australia, the transaction must be regarded as one and indivisible from the initial processes in Australia until payment by the purchaser abroad.
2. That, for the purpose of Income Taxation, it is necessary to devise some method of apportionment, to ascertain what proportion of the resulting profit is attributable to and, therefore, taxable in Australia.

That the Commonwealth Crown Law Officers consider these cases an authority for the proposition just stated may, we think, be conclusively inferred from the fact that the Rules now in force imply such a construction, and were issued by the Commissioner on the advice of the Crown Law authorities. It must, therefore, be accepted that these Rules are consistent with an Act such as the Commonwealth Act, restricting the application of Income Tax to incomes "derived from sources within Australia."

2. **F.o.b. Method—General Effect.**—The adoption of the f.o.b. method recommended in the Report would effect an important alteration in the Income Tax Act. That method would, for taxation purposes, treat a buying and selling transaction, where the purchase is made in Australia and the sale occurs after export overseas, as if it were completed as soon as the goods forming the subject-matter of the transaction had been purchased and exported. The method rests, indeed, upon the fictional assumption that the goods have been sold before leaving Australia at the f.o.b. price ruling at time of export. For example, a merchant having by charter or otherwise secured freight space goes into the market and buys £20,000 worth of Australian products. These may be shipped and leave Australia very shortly after purchase. Then, for purposes of Income Tax, the transaction would under the f.o.b. system recommended in the Report be governed by what had happened in the Australian market during the interval between purchase and export. If there had been no change in the market price, the transaction would be regarded as showing neither profit nor loss, with the result that the exporter would not be liable for any tax, nor would he be entitled to claim any deduction. If the market price were lower at the date of export than at the date of purchase, the difference would be treated as a loss deductible from taxable income (if any) derived from other sources ; while, if the market price had risen during that period, the difference would be an addition to taxable income. If the exporter were also the producer or manufacturer of the goods exported, the position would be similar except that, for the purpose of taxation, cost of production plus charges would be the factor to take into account instead of purchase price. Any profit resulting from completion of the transaction by sale abroad would in either case not be treated as an addition to nor any loss as deductible from taxable income.

3. For the purposes of this discussion, exporters may be grouped into three classes, viz. :—

Class 1.—Overseas buyers who visit Australia for the purpose of buying Australian produce, or who buy through a local agent.

Class 2.—Australian producers (including manufacturers) who export their own products.

Class 3.—Australian residents who buy and export goods of which they are not the producers or manufacturers.

No statistics are available to show the actual proportions represented by each of these classes, but it is believed that Class 3 is much the largest, and that, relatively to the other two, Class 2 is quite small.

4. From the point of view of taxation, a person coming within Class 1, *i.e.*, an overseas buyer would occupy an anomalous and unsatisfactory position. If there was on the whole an increase in market value between the date of purchase and the date of export of the goods, he would become liable to taxation upon that difference, on the ground that he had made a profit, although in the circumstances that profit would be altogether theoretical. But, if the market declined between those dates, while he would on the same theory have made a loss, he would be in no position to obtain any deduction on account of that loss, since he would rarely, if ever, have other taxable income in Australia from which the loss might be deducted; nor could such a theoretical and unrealized loss be claimed as a deduction from assessable income in the buyer's own country.

5. Where the producer is also the exporter (Class 2) the question whether there would be (*a*) a taxable income, or (*b*) a deductible loss, or (*c*) neither taxable income nor deductible loss, would under the f.o.b. method depend upon it being shown to the satisfaction of the Department that the cost up to the point of export was (*a*) less than, (*b*) greater than, or (*c*) equal to the f.o.b. value at date of export.

6. Where the exporter is an Australian resident who is not the producer or manufacturer of the goods exported (Class 3) then in cases where there was a (theoretical) profit, he would be in the same position as to Australian Income Tax as the exporter in Class 1; but, in the case of a (theoretical) loss, he would almost certainly be in a position of greater advantage, as he would probably have an assessable income from other sources from which the loss could be deducted.

7. In cases coming within Class 3, a fact of cardinal importance is that in normal times values of primary products have but small fluctuations during any short period, such as usually elapses between purchase for export and actual export. There is also the fact that the small price movements in these limited periods may in a number of transactions be about as much in one direction as in the opposite, so that on the whole they might bring little or nothing into the taxable field. A fall of price between date of purchase and date of export would create a loss deductible from taxable income, while an upward movement would add to taxable income. There is therefore less likelihood of failure on the part of taxpayers to observe and record falls than increases in price.

8. **F.o.b. Method—Revenue Effect.**—Some idea of the amplitude of the change, from the revenue point of view, which would be effected by the introduction of the f.o.b. method may be formed from a consideration of the value of Australian exports. The figures for 1919-20, the latest year for which detailed information has been published, show that (exclusive of gold and silver, £6,500,000) Australian products, almost wholly primary, to the value of £130,000,000 were exported. The serious importance of the recommendations made in the Report is that the adoption of the proposed f.o.b. method would have the effect of largely freeing from taxation the profits upon a proportion of Australian exports which on the present scale of the national business probably represents a sum of the order of £70,000,000 to £80,000,000. It has been suggested that many of the transactions making up this large total finally result in loss; but (as was frequently and truly said during our inquiry) unless the successes considerably outweighed the losses, export would cease or be very greatly reduced. There can, we think, be no doubt that the aggregate profits from this volume of Australian exports amount in all but unusually unfavorable years to a very large sum. Under the f.o.b. method these profits would wholly escape taxation; under the present Commonwealth method they are taxed to the extent to which, in accordance with the Judgments referred to in paragraph 2 above, they are attributable to sources in Australia.

9. Some comment may here be made upon particular paragraphs in the Report.

Paragraph 394—Fairness over a Series of Years.—A taxpayer who continued export transactions during a series of years might or might not find the f.o.b. method work out fairly to him. Fairness in the aggregate may satisfy Revenue authorities, but if, as certainly would be the case, a great many individuals suffer detriment, while others are advantaged, those who suffer will undoubtedly complain. The Victorian State Commissioner of Taxes, in evidence on this point, said:—

> "You cannot convince a taxpayer that on an article which made a loss (that is on sale abroad) he made a profit in Australia."

But the f.o.b. method would make him taxable on the theoretical profit represented by any increase in f.o.b. value at time of export over cost or purchase price.

10. **Paragraph 395—Simplicity, Certainty, and Early Finality.**—The claim for **simplicity** of the f.o.b. method made in the Report seems to be a claim that it is simpler than the present Commonwealth method. But this greater simplicity is not, it seems, an absence of some element

of complexity which is present in the existing method, but is assumed to be established by the statement that the f.o.b. value can in the great majority of instances be fixed with greater readiness and certainty than the cost price. Now the evidence (Victorian State Commissioner) is that:—

> "The (Commonwealth) method is elastic enough to meet all cases,"

and (Commonwealth Commissioner) that:—

> "It works smoothly and without complaint."

The evidence also is that the original f.o.b. method broke down partly because of cases where neither Australian market value nor world's parity prices were ascertainable. In our opinion the Commonwealth method is not less simple than the f.o.b. method.

11. The two attributes of **certainty** and early **finality** claimed for the f.o.b. method in the Report may be taken together, for they are hardly separable. What is meant by the claim is that under the f.o.b. method an exporter of goods, as soon as export occurs, can ascertain his position with regard to the taxation, if any, which will become payable upon the transaction, irrespective of whether the subsequent sale abroad discloses a profit, a loss, or neither. But the finality so ascertained can in many cases be only approximate. If the taxpayer's only source of income was the profit derivable from making one consignment or a series of consignments for sale abroad during any accounting period, he would, when the final shipment had been made, be in a position to set down his gains or losses for the purposes of taxation. But if such exports for sale abroad constituted a part only of his business, obviously he would be unable, until the end of the accounting period, to ascertain the rate of tax applicable to his export profits.

12. The "finality" said to be attained is attained by a highly artificial method. To take a buying and selling transaction and declare it closed for taxation purposes when all that has occurred is that a purchase has been made and the goods exported (though still unsold) is clearly arbitrary and artificial. The same remark applies where there has been no buying, but the exporter has produced or manufactured the goods exported. It has been suggested that there is an analogy with the taking into account of stock on hand at the end of the financial year; but in reality the two cases are widely different. While the cost or market value of goods in stock at the end of the year affects the tax for that year, that same value will come into next year's account, and the final effect upon the owner's taxation will not be known until the goods are actually sold. Under the f.o.b. method, the result of the sale abroad, however advantageous to the owner, has no effect upon his tax. Again, as shown in paragraph 8, the "finality" desired would result in a final removing from the area of taxation of an important portion of the profits resulting from huge transactions by Australian residents.

13. **Paragraph 398—Equality of Opportunity.**—The paragraph in the Report so headed criticises the present Federal method as handicapping Australian residents. The criticism omits mention of the handicap imposed on a buyer visiting Australia, by the large expenditure in time and money which he must incur in reaching the Australian market and returning therefrom. It also omits the fact that nearly all the visiting buyers of Australian products come from countries in which the burden of Income Taxation is heavier than in Australia. In our opinion it is safe to say that on the two items of travelling expenditure and of Income Tax in the buyer's own country, the handicap in nearly every instance is upon the visiting buyer and not upon the Australian resident. But if the alleged handicap to Australian exporters as compared with visiting oversea buyers is **unreal**, the f.o.b. system would impose a **real** handicap upon one class of Australian trader as compared with another. Assume, for example, that A and B, two dealers in Australian products, go into the market on the same day and buy two similar parcels of goods at the same price. A exports his parcel almost immediately, the market remaining stationary meanwhile. B retains his parcel for a month or two, and, there being an advance in the market, then sells to an Australian manufacturer. In these circumstances, A, though he may have made a substantial profit oversea, would not be liable to Income Tax, while B would be liable.

14. **Paragraph 398A—Inequitable Operation.**—In this paragraph the report criticises the present Commonwealth method as operating inequitably in a type of cases which may often occur. Taking the same example as it would be dealt with under the f.o.b. method recommended in the Report, we find that A, who because of the superior efficiency of his equipment and management, produces at less cost than B, would be penalized for his greater efficiency by paying higher tax than his rival B; though it might often happen in such cases that the ultimate profit derived by A when the goods were sold abroad would be less than that realized by B.

15. One further comment may be made. We are of opinion that the imposition of tax (as would occur under the f.o.b. method) upon purely buying transactions by persons who bring capital

into Australia for the purpose is unsound policy, as it would almost certainly have one of two effects—either it would tend to keep capital away from Australia, or the tax would be transferred to the Australian producer by a lowering of prices for his products. Whichever result occurred would be detrimental to Australia.

16. In our opinion, the disadvantages of the proposed f.o.b. method are such that its adoption would tend to be injurious to Australian producing interests; would create discontent as operating unfairly between one Australian trader and another; and would free from taxation large sums which are properly taxable.

17. The present Federal Cost method has some disadvantages, but it is free from the artificiality which characterizes the f.o.b. method, since it takes into account the final result of a trading venture, when actual and not merely theoretical profits or losses are ascertained, and, in our opinion, no substitutionary method yet proposed does equal justice to the taxpayer and to the Revenue, or is equally capable of general application.

RECOMMENDATION.

We recommend—

The retention of the present Federal Cost Method of dealing with exports.

(NOTE.—Attention is invited to the note at end of the section of the report dealing with Taxation of Income of Australian Residents derived outside Australia.)

W. T. MISSINGHAM.
S. MILLS.
M. B. DUFFY.

CASUAL PROFITS.

RESERVATION.

1. I am unable to accept the recommendations of the Report in regard to Casual Profits.

2. Casual Profits may be difficult to locate in all instances, but that does not mean they are not profits, and, therefore, income to the recipient. Any person who sells an article for a price higher than the price paid for it *primâ facie* makes a profit, and, though the transaction may be isolated, it is not different from profit made by selling several articles at prices higher than cost, which is the result of business. A business man may sell his whole business, and make a profit in one transaction equal to that which he would have made in five years of ordinary trading, and surely it cannot be said he should be free from tax on the profit made in one transaction instead of bit by bit over a period. Again, a man may buy a leasehold, and, after working the property for some time, sell the lease for a considerable profit, and this is rightly recognised as taxable profit (or rent); but a person who buys a freehold property, and, after working it himself for some time, sells it at a profit, such profit is not considered taxable profit. It is very difficult to distinguish between the two cases in essence. In share transactions it is quite conceivable a person may buy shares now and again with no intention of holding them for dividends, but simply to make a profit should the market rise, and this profit should certainly be included in income, notwithstanding its casual nature.

3. The Report does not recommend the inclusion of Casual Profits in income, because of the possibility of evasion, and the necessity for allowing losses.

4. If taxpayers evade their responsibilities to the nation, it is no reason for excluding this class of income from taxation; rather would the effect of the inclusion be to lighten the burden upon regular incomes, and take some of the revenue required from windfalls and casual gains, which may sometimes be very large amounts.

5. Transactions in real estate and stocks and shares cannot be said to be difficult to locate as the necessary machinery could be put into operation to deal with such matters at very little extra cost.

6. As to the allowance for losses, I cannot see but that it is reasonable. Nobody sets out on a transaction anticipating a loss on it, and if a loss is made he is so much the poorer, and should be entitled to set the loss off against income.

7. Undoubtedly the best method of arriving at a person's income for a period is to take into consideration every gain and every loss of whatever nature that has taken place during the period, and the nearer Income Tax law is brought to this ideal, the more equitable it will be to the whole body of taxpayers.

8. I therefore **recommend** that the present law should be extended from time to time to include such Casual Profits as the Administration may feel satisfied could be safely handled without undue expense in the collection.

M. B. DUFFY.

APPENDIX 4.

AN AGREEMENT made the.....day of December, One thousand nine hundred and twenty, between the Commonwealth of Australia (hereinafter called the "Commonwealth"), of the one part, and the State of Western Australia (hereinafter called the "State") of the other part.

WHEREAS it is desirable in the public interests and to avoid duplication of services that the Land Tax, Income Tax, Totalisator Duty, and Dividend Duty, payable from time to time to the State (hereinafter called the "State Tax") and the Land Tax, Income Tax, War-time Profits Tax, Estate Duty, and Entertainments Tax, payable from time to time to the Commonwealth (hereinafter called the "Commonwealth Taxes") should so far as practicable be assessed and collected by the one agency; and WHEREAS it is necessary that any arrangement for that purpose should preserve inviolate the respective sovereign powers and rights of the Commonwealth and the State; and WHEREAS the Commonwealth has offered to collect the State Taxes under the conditions hereinafter contained for one-third of the expenditure required for the assessment and collection of the State taxes, as set forth in the estimates for the financial year of the State ending the thirtieth day of June, 1921, submitted by the State Government to the Parliament of the State; and WHEREAS the State has accepted the said offer, now it is agreed as follows:—

(1) The Commonwealth shall collect the Land Tax, Income Tax, Totalisator Duty, and Dividend Duty payable to the State Government, and the State Government shall pay to the Commonwealth Government for doing so an annual sum equal to one-third of the total amount (less the salary of the State Commissioner of Taxation) as certified by the Auditors-General of the State of Western Australia and of the Commonwealth as being involved in the assessment and collection of the said taxes during the financial year of the State ending thirtieth June, 1921.

(*a*) The State may from time to time appoint any person to be State Commissioner of Taxation (hereinafter called the "State Commissioner"), and may remove any person so appointed.

(*b*) The State shall fix and pay the salary of the State Commissioner.

(2) If the State appoints as State Commissioner the person for the time being holding the position of Deputy Federal Commissioner of Taxation for the State of Western Australia—

(*a*) The State shall pay to the Commonwealth an amount equal to the salary of the State Commissioner, determined in the manner provided by Clause 7 (*b*) hereof, for the period of such appointment.

(*b*) The Commonwealth shall, out of the said amount, pay the salary of any assistant officer to the Deputy Federal Commissioner deemed necessary by the Commonwealth Commissioner of Taxation (hereinafter called the "Commonwealth Commissioner").

(*c*) The Commonwealth shall pay to the Deputy Federal Commissioner, while State Commissioner, as additional salary, such portion of the residue (if any) of the said amount as the State approves, and

(*d*) The Commonwealth shall provide at its own cost all increments of salary granted to the said Assistant Officer.

(3) If the Commonwealth appointed the State Commissioner as Deputy Federal Commissioner of Taxation for the State of Western Australia—

(*a*) The State shall pay the salary of the State Commissioner, determined in manner provided by Clause 7 (*b*) hereof, and

(*b*) The Commonwealth shall appoint and pay any assistant officer to the Deputy Federal Commissioner deemed necessary by the Commonwealth Commissioner.

(4) If at any time, and so long as the State Government should appoint as the State Commissioner of Taxation the person for the time being holding the position of Deputy Federal Commissioner of Taxation for the State of Western Australia, the State Government shall pay to the Commonwealth Government an amount not exceeding the sum ascertained in accordance with Clause (1) of this agreement as the salary of the State Commissioner of Taxation for the purpose of paying the salary of an assistant officer to the Deputy Federal Commissioner of Taxation as in the opinion of the Federal Commissioner of Taxation is necessary. Such portion of the residue, if any, of the said sum so ascertained as may remain after paying the salary of the said assistant officer shall be paid to the Deputy Federal Commissioner of Taxation for his services as State Commissioner of Taxation, as the State Government may decide. The Commonwealth Government shall provide, without further charge to the State Government, all increments in salary which may be granted to the said assistant officer.

(*a*) The State Commissioner shall be responsible to the State for the due assessments and collection of the State Taxes and the administration of the laws of the State relating thereto, and shall be free from interference or control by the Commonwealth or the Commonwealth Commissioner.

(*b*) All matters arising in connexion with the exercise by the State Commissioner of his powers and functions under the laws of the State shall be determined by him in accordance with those laws.

(5) In the event of the Commonwealth Government appointing a State Commissioner of Taxation as the Deputy Federal Commissioner of Taxation for the State of Western Australia, the State Government shall pay the salary of the State Commissioner of Taxation as ascertained in accordance with paragraph (1) of this agreement, and the Commonwealth Government shall appoint and pay the salary of such assistant officer as in the opinion of the Federal Commissioner of Taxation is necessary for the effective collection of the State and Commonwealth Taxes mentioned in this Agreement.

(*a*) The Commonwealth Commissioner shall be responsible to the Commonwealth for the due assessment and collection of the Commonwealth Taxes and the administration of the laws of the Commonwealth relating thereto and shall be free from interference or control by the State or the State Commissioner.

(*b*) All matters arising in connexion with the exercise by the Commonwealth Commissioner of his powers and functions under the laws of the Commonwealth shall be determined by him in accordance with those laws.

(6) The Federal Commissioner of Taxation shall have authority to control the staff required to assess and collect the Taxes mentioned in this Agreement, and to make such arrangements for the conduct of the work involved as in his opinion are best calculated to secure efficiency and economy.

(*a*) The Commonwealth shall transfer to positions in the permanent Service of the Commonwealth all officers who on the first day of July, 1920, were and at the date when this agreement comes into operation are permanent or probationary permanent officers in the Service of the State in the State Taxation Office, and who consent to be so transferred.

(*b*) Each officer so transferred—

(i) shall be subject in all respects to the laws of the Commonwealth regulating the Public Service; and

(ii) shall preserve all existing and accruing rights and shall be entitled to retire from office at the time and on the pension, retiring allowance which would be permitted by the laws of the State if his service with the Commonwealth were a continuation of his service with the State; and

(iii) shall so far as practicable be employed on duties of status equal to those now performed by him.

(7) The Federal Commissioner of Taxation shall delegate to the person for the time being holding the position of State Commissioner of Taxation all necessary authority over staff as will enable the State Commissioner to administer the State Laws mentioned in this Agreement in the manner required by the State Government; and such powers and functions in connexion with any Commonwealth Laws mentioned in this agreement as the Federal Commissioner deems necessary to assist him in the administration within the State of Western Australia of any of such Commonwealth Laws.

(*a*) The State shall pay to the Commonwealth in such year during the continuance of this Agreement an amount equal to one-third of the total estimated cost (less the salary of the State Commissioner) to the State of the assessments and collection of the State Taxes during the financial year ending the thirtieth day of June, 1921.

(*b*) For the purpose of such estimated cost officers of the State shall be deemed to be in receipt of salaries at rates determined in connexion with classification made by the State Public Service Commissioner in October, 1920.

(*c*) The said estimated cost shall include—

(i) Salaries of officers other than the State Commissioner;

(ii) All relevant contingent expenditure included in Parliamentary Estimates of the State for the year;

(iii) All other expenditure properly referable to the assessment and collection of the State Taxes, including rent of and interest payable by the State on the cost of premises occupied by the State for taxation purposes.

(*d*) The said estimated cost shall be determined by agreement between the Commonwealth Commissioner and the State Commissioner or in default of agreement by the State Auditor-General.

(*e*) The amount payable by the State shall be paid to the Commonwealth on or before the thirtieth day of June in each year.

(8) The Commonwealth shall provide all officers (other than the "State Commissioner") and office accommodation and equipment, and do all things necessary or convenient for the purposes of the assessment and collection of the State Taxes.

(9) The Commonwealth Commissioner shall have full control of all officers (other than the State Commissioner) employed in the assessment and collection of the State Taxes and may make such arrangements for the conduct of the work as in his opinion are best calculated to secure efficiency and economy.

(10) The Commonwealth Commissioner shall delegate to the State Commissioner such of his powers and functions (including authority over officers) as may be necessary or convenient to enable the State Commissioner—

(*a*) to administer in the matter required by the State the laws of the State relating to the State Taxes; and

(*b*) to assist the Commonwealth Commissioner to administer within Western Australia the laws of the Commonwealth relating to the Commonwealth Taxes.

(11) The State Government agrees that when the State Law on any point is identical with the Commonwealth Law, the State Law shall be interpreted in the same manner as the Commonwealth Law.

(*a*) The State Commissioner shall delegate to the Deputy Federal Commissioner of Taxation for the State of Western Australia such of his powers and functions under the laws of the State as may be necessary or convenient to enable the Deputy Federal Commissioner to assist the State Commissioner to administer the said laws.

(*b*) The State Commissioner shall delegate to an officer or officers nominated for that purpose by the Commonwealth Commissioner such of his power and functions under the laws of the State as may be necessary or convenient to enable such officer or officers to assist the State Commissioner to administer the said laws in connexion with matters dealt with at the Central Office of the Commonwealth Commissioner pursuant to any arrangement made between the State Commissioner and the Commonwealth Commissioner.

(12) Where a law of the State is in terms identical with or substantially similar to a law of the Commonwealth the State Commissioner shall, in the administration of the Law of the State, adopt and act upon the interpretation for the time being given to the Law of the Commonwealth by the Commonwealth Commissioner unless and until the Law of the State is otherwise interpreted by a competent Court.

(13) Nothing in this agreement shall be deemed to restrict or impede the State in the exercise of its rights and powers under the Constitution of the State and the Laws of the State now or hereafter in force.

(14) The State Commissioner shall from time to time supply to the State and to its Ministers—

(*a*) Information, advice, and assistance in connexion with Taxation Laws of the State; and

(*b*) Information necessary or convenient for the more efficient administration of other Laws of the State, such as the "Stamp Act," the "Administration Act," and the "Mining Act," required by the State or its Ministers and which the State Commissioner is able and legally empowered to supply.

(15) In order that the work of assessment and collection of Taxes may proceed expeditiously and economically, the Government of the State and the Commonwealth respectively will submit to Parliament before the thirtieth day of September in each year or as early as practicable thereafter proposed Laws fixing respectively the rates of the State and Commonwealth Taxes for that year, and endeavour to have those proposed Laws dealt with by Parliament without delay.

(16) The State Commissioner shall in the manner from time to time required by the State Treasurer deal with and account for all State Taxes collected pursuant to this agreement, and the Commonwealth Commissioner shall make any arrangements necessary or convenient to enable the State Commissioner to do so.

(17) The Commonwealth hereby authorize the Commonwealth Commissioner to make such provision as he deems necessary for the compilation of all reasonable statistics concerning the State Taxes as the State may require.

(18) The Commonwealth Government shall enable the Federal Commissioner of Taxation to make such provision as in his opinion is necessary for the compilation of all reasonable statistics concerning the State Taxes mentioned in this Agreement as the State Government may require.

(*a*) In addition to or in lieu of the forms of return respectively from time to time prescribed for State and Commonwealth Land Tax, Income Tax purposes, there shall be prepared—

(i) A joint form of Land Tax return suitable for both State and Commonwealth Land Tax purposes in Western Australia; and

(ii) A joint form of Income Tax return suitable for both State and Commonwealth Income Tax purposes in Western Australia.

(*b*) Returns furnished in the joint form of taxpayers owning land in or deriving income from sources in Western Australia only shall be accepted as sufficient so far as form is concerned.

(*c*) Taxpayers owning land in or deriving income from sources in Western Australia and elsewhere in Australia shall be given the option of furnishing—

(i) Returns in the Commonwealth prescribed form only at the Commonwealth Central Office; or

(ii) Returns in the Commonwealth prescribed form at the Commonwealth Central Office, and in addition, returns in the State prescribed form at the Office in Western Australia.

(*d*) Assessment of land or income for the purpose of State Tax may be made at the Commonwealth Central Office when returns have been furnished only at that office. Any assessment for State Tax made at the Central Office shall be notified to the State Commissioner, and any State Tax collected by the Commonwealth shall be accounted for and dealt with as the State Commissioner shall require.

(19) So far as practicable one form of receipt shall be issued when both State Tax and Commonwealth Tax are paid at the same time by the same taxpayer unless the circumstances of the case make separate forms of receipt advisable.

(20) When income derived from sources within Western Australia or land owned in Western Australia is being assessed in the Central Office of the Commonwealth Department of Taxation, on behalf of the State Government, the Federal Commissioner of Taxation shall make a separate assessment of that particular income or land for the purposes of the State Government, and shall separately account for it to the State Treasurer, and deal with it in such manner as the State Treasurer may direct.

(*a*) Prosecutions for offences against the Laws of the State relating to the State Taxes shall be conducted by and at the expense of the Commonwealth.

(*b*) When an act or omission constitutes an offence under both the Law of the State and the Law of the Commonwealth—

(i) a prosecution may in the discretion of the Commonwealth Commissioner be instituted under either law;

(ii) as a general rule the prosecution shall be instituted under the law which provides the greater penalty;

(iii) any monetary penalty recovered shall be paid into the Consolidated Revenue of the party under whose law the prosecution is instituted; and

(iv) the party into whose revenue the penalty is paid shall pay or credit to the other party one-half of the amount of the penalty.

(*c*) When an act or omission constitutes an offence under one law only, any monetary penalty recovered shall be paid into the Consolidated Revenue of the party under whose law the prosecution is instituted, and be retained wholly by that party.

(21) Where, by reason of an act, default, or omission of a taxpayer a sum has been collected as penalty or additional tax by way of penalty (not being a penalty imposed by a Court) such sum shall be applied as follows:—

(*a*) If the sum is recoverable under one law only it shall be retained wholly by the party under whose law it is recovered; or

(*b*) If the sum is recoverable under both the law of the State and the law of the Commonwealth it shall be divided equally between the State and the Commonwealth.

(22) If a taxpayer at any time pays less than the full amount then due and payable by him for State and Commonwealth Taxes the amount paid shall (unless the taxpayer otherwise directs) be credited to the State and to the Commonwealth respectively *pro rata* to the full amount then due and payable by the taxpayer to the State and the Commonwealth.

(23) The State shall arrange for the State Commissioner to receive from time to time from the State Attorney-General's Department, free of charge, all legal advice which the State Commissioner may desire in connexion with the administration of the laws of the State relating to the State Taxes.

(24) The State Commissioner shall not take any action to defend in the Courts an appeal instituted by a taxpayer against an assessment for State Tax unless and until the Commonwealth Commissioner has obtained the advice of the Commonwealth Law Officers on the matter in issue, and the State Commissioner shall deal with such appeal in the matter advised by the Commonwealth Law Officers.

(25) Before any appeal by a taxpayer against an assessment of tax under any of the State Laws mentioned in this Agreement is referred to a Court the appeal shall be submitted by the Federal Commissioner of Taxation for the advice of the Solicitor-General of the Commonwealth as to the correct interpretation of the law, and the appeal shall be allowed or disallowed, in accordance with such advice.

(*a*) The State will, by its Government, take any action within its power to obtain such amendments in any of the laws of the State as may be necessary or advisable to enable this Agreement to be fully and effectively performed on its part.

(*b*) The Commonwealth will, by its Government, take any action within its power to obtain such amendments in any of the laws of the Commonwealth as may be necessary or advisable to enable this agreement to be fully and effectively performed on its part.

(*c*) Such amendments shall, *inter alia*, include any amendments deemed necessary or advisable by the Commonwealth Commissioner to provide for the custody of documents and records relating to the assessment and collection of State and Commonwealth taxes and the effective discipline and control of officers employed on such assessment and collection.

(26) Any notice to be given by either party to the other under this Agreement shall be deemed to have been duly given if signed by the Treasurer of the party giving it and sent by prepaid post addressed to the Treasurer of the other party.

(27) This Agreement shall come into operation on the first day of July, One thousand nine hundred and twenty-one, and shall continue in force until the expiration of not less than six calendar months' notice in writing by either party of intention to terminate it, which notice may be given at any time.

APPENDIX 5.

COMMONWEALTH AND STATE REVENUE FROM TAXATION, 1920-21.

Government.	Population.	Indirect Taxation. Customs and Excise.	Direct Taxation.					Total Direct Taxation.		Cost of Collection.			
			Estate and Probate and Succession Duties.	Other Stamp Duties.	Land Tax.	Income Tax.							
						Total Collections.	Per Capita.			Total Cost.*	Percentage of Collection.‖	Per Capita.	
		£	£	£	£	£	£ s. d.	£	£	£	%	s. d.	
		C 21,731,210 E 10,078,696											
Commonwealth ..	5,455,423	31,809,906	1,179,513	..	2,155,699	14,351,408	2 12 7	649,828	20,617,515	513,422	2.49	1 10.59	
		(Per Capita Payments from the Commonwealth Government.)											
New South Wales ..	2,101,384	2,533,234	734,352	1,414,468	2,717	4,399,360	2 1 10	..	7,388,133	52,631	$0.71	$0 6.01	
Victoria	1,535,938	1,878,449	702,468	928,367	331,756	1,591,198	1 0 9	..	3,846,833	63,102	1.64	0 9.86	
Queensland ..	768,964	912,628	328,204	332,559	469,175	2,410,171	3 2 8	..	3,682,642	56,084	1.52	1 5.50	
South Australia ..	497,525	588,603	158,107	370,288	168,020	852,001	1 14 3	..	1,622,076	38,176	2.35	1 6.42	
Western Australia ..	333,117	564,735	42,407	177,404	57,791	579,289	1 14 9	..	955,339	33,872	3.55	2 0.40	
Tasmania ..	211,984	272,514 S 90,000	53,407	148,803	89,085	348,005	1 12 10	..	708,603	16,412	2.32	1 6.58	
All States ..	5,448,912	6,840,163	2,018,945	3,371,979	1,118,544	10,180,024	1 17 4	..	18,203,646	260,277	1.43	0 11.46	
Commonwealth and States ..	†5,455,423	31,809,906	3,198,458	3,371,979	3,274,243	24,531,432	4 9 11	649,828	38,821,161	773,699	1.99	2 10.04	

C Customs Duty. E Excise Duty. S Special Subsidy.

* Includes expenses of Commissioners of Taxation and Stamp Duties. Certain minor expenses are also incurred in connexion with the collection of Licence Fees, &c., by other than Taxation Departments. Such expenses are not ascertainable, but they would not however affect the percentage Cost to any appreciable extent.

‡ War Time Profits Tax, £2,083,139; War Postage, £197,928.

‖ These figures beyond being of Statistical Interest are of little economic value as they are chiefly dependent upon the rates charged, thus the doubling of the rates by any particular Government, whilst the Total Cost remains constant would have the effect of halving the percentage cost.

§ Low Costs partly attributable to contraction of work consequent on high exemptions and allowances releasing from Taxation a large number of incomes which would be taxable in other States and by the Commonwealth.

† Includes Northern Territory, 3,928; Federal Territory, 2,583

SUMMARY.

Governments	Taxation.	Collections.		
		Total.	Per Capita.	
		£	£ s. d.	
Commonwealth	Indirect	31,809,906	5 16 7	
	Direct	20,617,515	3 15 7	
	Total ..	52,427,421	9 12 2	
States	Direct	18,203,646	3 6 9	
Total—Commonwealth and States	..	70,631,067	12 18 11	

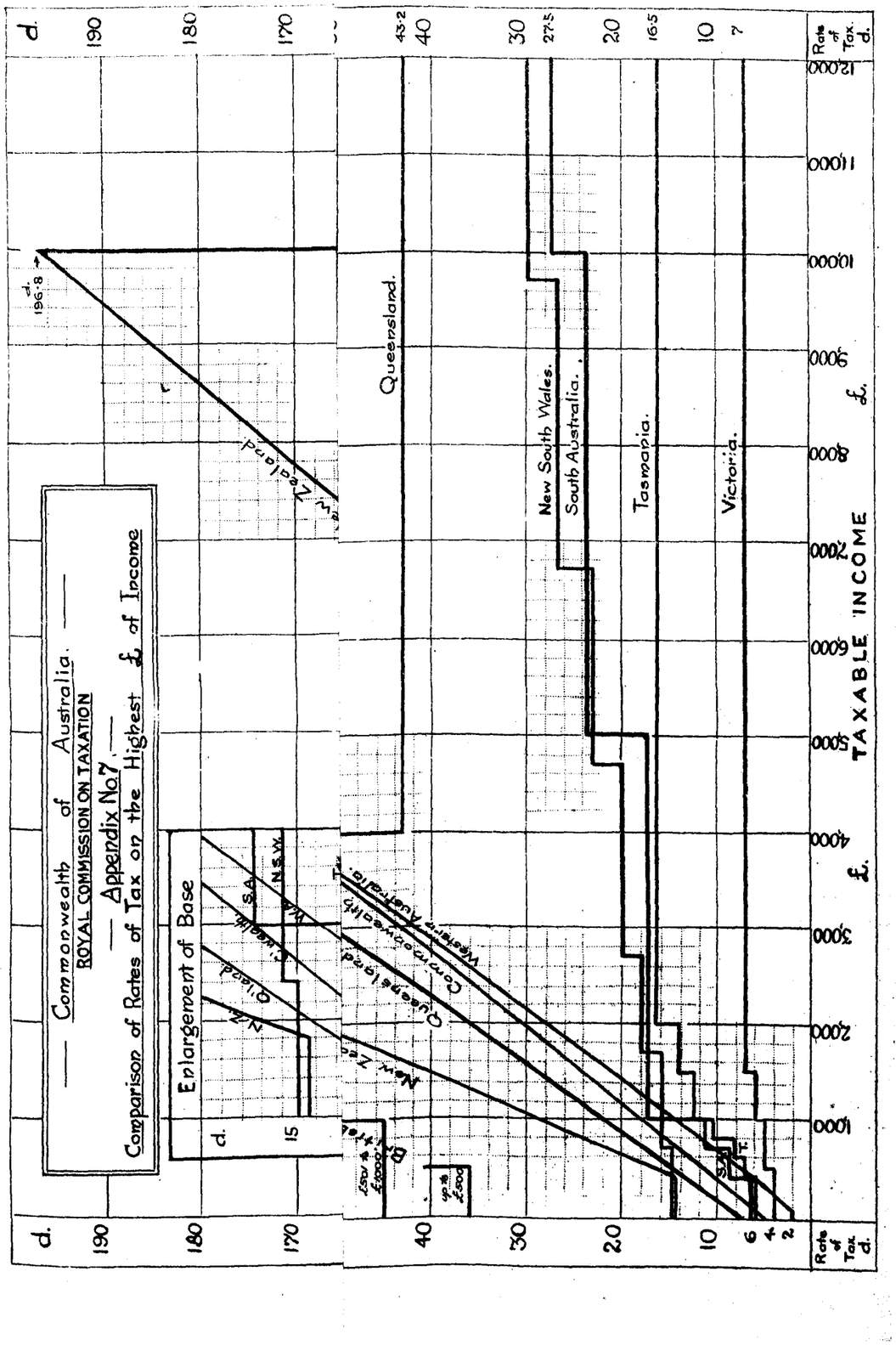
¶ The Commonwealth does not retain the whole of these collections, but distributes portion amongst the States on a basis of £1 1s. per capita, subject to minor adjustments.

APPENDIX No. 6.

SUMMARY OF PROVISIONS DEFINING THE SPHERE OF TAXATION IN THE VARIOUS INCOME TAX ACTS IN FORCE IN BRITISH DOMINIONS.

Commonwealth of Australia	Income derived directly or indirectly from sources in Australia.
New South Wales ..	Income derived from any source in the State or earned therein. Income derived from sources outside the State is specifically exempted.
Victoria	Income earned in or derived in or from Victoria, and income arising or accruing from any trade carried on in Victoria
Queensland ..	Income earned in or derived in or from Queensland, and income arising or accruing from any business carried on in Queensland.
South Australia ..	Income arising or accruing in or derived from the State.
Western Australia ..	Income arising from or accruing in Western Australia. Income earned outside the State is specifically exempted.
Tasmania ..	Income arising, accruing, received in or derived from the State. Where a taxpayer residing in Tasmania derives any income from a source outside Tasmania, he may deduct from the Tasmanian tax such sum as he shows to have been paid by him by way of Income Tax elsewhere on the same income. Where income is derived from mortgages of land assessed to Land Tax elsewhere, the Land Tax on the mortgages may similarly be deducted.
New Zealand ..	Income received by residents in New Zealand wherever derived. Income derived by a person resident in New Zealand, but not derived from New Zealand, is exempt from Income Tax, if and so far as the Commissioner is satisfied that it is derived from some other country within the British Dominions, and that it is chargeable with Income Tax in that country.
Fiji	Income derived by a resident from some other country within the British Empire, except the United Kingdom, if charged with Income Tax in such country, is specifically exempted. Any person who proves that he has paid Fiji Income Tax and United Kingdom Income Tax for the same year in respect of the same part of his income is entitled to relief at a rate equal to the excess of the appropriate rate of Fiji Tax over half the appropriate rate of United Kingdom Tax, or if the Fiji rate exceeds the United Kingdom rate at half the United Kingdom rate.
Union of South Africa	Income from any source within the Union or deemed to be within the Union. Income is deemed to be derived from a source within the Union, if it is received or accrues from any country outside the Union where the income is not chargeable to Income Tax owing to the fact that such person is not domiciled or ordinarily resident therein.
Southern Rhodesia	Income from any source within the Union or deemed to be within the Union. Income is deemed to be derived from a source within the Territory if it is received by or accrues to or in favour of any person ordinarily resident or carrying on business within the Territory, and is received or accrues from any source except banking or insurance business in any adjoining territory, provided that it is not chargeable with income or any other tax therein.
Northern Rhodesia ..	Income from any source within the Territory or deemed to be within the Territory.
Basutoland ..	Income from any source within the Territory or deemed to be within the Territory. Income is deemed to be derived from sources within the Territory, if it is received or accrues from any country outside the Territory where, owing to the fact that such person is not domiciled or ordinarily resident therein, the income is not chargeable to Income Tax.
Kenya	Income received by or accrued to any person or brought into the Colony or the Protectorate. Income brought into the Colony or the Protectorate and accruing or arising in any part of the British Empire or in any territory under His Majesty's protection is liable to tax at a rate equal to the excess of the rate in force in the Colony or the Protectorate over the rate paid in the country from which such income is derived. Any person resident in the United Kingdom who has paid by deduction or otherwise, or is liable to pay Income Tax under the Kenya Ordinance for any year of assessment on any part of his income, and who proves to the satisfaction of the Commissioner that he has paid Income Tax in the United Kingdom for that year in respect of the same part of his income, is entitled to relie ffrom Income Tax under the Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under the Ordinance exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under the Ordinance exceeds the appropriate rate of United Kingdom tax, he is entitled to relief at a rate equal to half the appropriate rate of United Kingdom tax.
Seychelles ..	Income from any source, whether in or out of Seychelles. Exemption is allowed in respect of income charged with Income Tax in some other country of the British Empire.
British India ..	All income (except from agricultural and a few other sources), if it accrues or arises or is received, or is deemed to accrue, arise or to be received, in British India.
Straits Settlements	Income from any source. Exemption is allowed in respect of any income *not arising in the Colony on which Income Tax has been or will be paid* in the United Kingdom or in any British Possession, Protectorate or Protected State at a rate not less than that chargeable under the Ordinance.
Canada	Income from sources within Canada or elsewhere. Deduction from the tax is allowed of the amount paid to Great Britain or any of its self-governing colonies or dependencies for Income Tax in respect of the income of the taxpayer derived from sources therein, and the amount similarly paid to any foreign country, if such foreign country treats Canada reciprocally, provided that such amount does not exceed the Canadian tax which would otherwise have been payable on the income in question.

British Columbia ..	Income derived in the Province, and income earned elsewhere received in the Province.
Prince Edward Island	Income derived in the Province, and income earned elsewhere received in the Province.
Jamaica	Income from any source whatsoever. Income Tax paid in any part of His Majesty's Dominions or in any country under His Majesty's protection on any income liable to Income Tax in Jamaica may be deducted from the tax payable in Jamaica upon such part of the income. Insurance Companies are not allowed the benefit of this provision.
Trinidad and Tobago	Income from any source. A person liable to Income Tax, both in the United Kingdom and in the Colony, is entitled to relief from such part of the tax for which he is liable in the Colony as will, together with the relief to which he may be entitled in the United Kingdom, amount to the lower of the two taxes for which he is liable.
St. Vincent ..	Income derived in the Colony, and income derived elsewhere if received in the Colony. Income Tax paid in any part of His Majesty's Dominions or in any country under His Majesty's protection may be deducted from the St. Vincent tax payable on the same income.
Grenada	Income derived in the Colony, and income derived elsewhere if received in the Colony. Any person who proves that he has paid Grenada Income Tax and United Kingdom Income Tax for the same year in respect of the same part of his income is entitled to relief at a rate equal to the excess of the appropriate rate of Grenada tax over half the appropriate rate of United Kingdom tax, or if the Grenada rate exceeds the United Kingdom rate at half the United Kingdom rate.
St. Lucia	Income derived in the Colony, and income derived elsewhere if received in the Colony.
British Honduras ..	Income derived in the Colony and income derived elsewhere if received in the Colony. Any person who proves that he has paid British Honduras Income Tax and United Kingdom Income Tax for the same year in respect of the same part of his income is entitled to relief at a rate equal to the excess of the appropriate rate of British Honduras Income Tax over half the appropriate rate of United Kingdom Income Tax, or, if the British Honduras rate exceeds the United Kingdom rate, at half the United Kingdom rate. Relief is granted in similar terms in respect of Income Tax paid in any other British Dominion, Colony or Protectorate.
Dominica	Income wherever derived.
Isle of Man ..	Income wherever derived. It is provided that:—"Whether derived from sources out of or within this island, with regard to income in respect of which Income Tax is payable by law in any place other than this island being part of the Dominions of the Crown (the same being hereafter in this Act referred to as 'elsewhere') the Income Tax payable under this Act shall be only at such rate and for such amount (if any) as the Income Tax payable under this Act shall be in excess of the Income Tax payable elsewhere."
Guernsey	Income wherever derived. Profits or income other than profits or income arising from sources in or connected with the Island of Guernsey upon which English (*sic*) Income Tax has been paid or deducted is exempt from the Guernsey tax to the extent which the Guernsey tax, if paid, could not be recovered from the English (*sic*) Inland Revenue.



Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.

1922.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA



REPORT

ROYAL COMMISSION ON TAXATION.

THIRD REPORT.

Presented by Command; ordered to be printed, 4th August, 1922.

[Cost of Paper.—Preparation not given; 1,050 copies; approximate cost of printing and publishing, £10.]

NE

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.

No. 35.—F.6620.—PRICE 1s. 6D.

CONTENTS

	Page
Introduction	145
Comments upon Various Sections of the Commonwealth Income Tax Assessment Act and Related Matters	145
Amended Assessments—Time Limit	165
Annuities	146
Beneficial Interests under Wills, &c.	150
Reservation	177
Compliance with Income Tax Law before issue of Passports	165
Co-operative Societies	145
Cricket Associations	149
Deductions	151
Agricultural Holdings, 5 per cent. of Capital Value	153
Allowances for Children	163
Alterations to Buildings, Plant, &c.	153
Calls paid on Shares in Companies	163
Commission for Collecting Income	163
Cost of Issue of and Discounts upon Debentures	154
Cost of New Machinery, Replacements, &c.	153
Cost of Netting and Eradication of Pests	153
Cost of Preparation of Taxation Returns	154
Depreciation	157
Food and Quarters provided for Employees	162
Gifts to Patriotic Funds, &c.	162
Improvements made under Covenant	164
Increased Rental due to Re-appraisement of Crown Leaseholds	155
Interest on borrowed Money	154
Interest on Mortgage of Taxpayer's Residence	163
Interest received from Government Loans	154
Interest upon Deposits, &c.	154
Legal Expenses	152
Life Insurance Premiums	156
Losses on Sale of War and Peace Loans	154
Losses, where more than one business is carried on	164
Obsolescence	158
Rates and Taxes	155
Removal Expenses	153
Repairs to Property	157
Replacements	159
Retiring Allowances to Employees	163
Subscriptions to Trade Associations, &c.	153
Superannuation Funds, &c.	162
Wasting Assets	159
Dividends derived from Capital Profits	150
Dissent	168
Income accrued prior to 1st July, 1914	150
Interest on Tax Overpaid	164
Late Payment of Tax—Penalty	166
Life Assurance Companies	151
Payment of Tax in Instalments	166
Penalty for Failure or Neglect to Furnish an Income Tax Return	166
Period for Payment of Tax	165
Reciprocal Exchange of Information between Taxation Authorities	146
Revenue of Municipal Corporations, &c.	147
Sub-divisional Sales upon Long Terms	147
Taxation of Wages at the Source	167
Administration	168
Decentralization	168
Office Orders	170
Staff and Staff Accommodation	169
Taxation of Interest on State Government Securities, and the Income of State Organizations	171
Addendum by Commissioner Jolly	175

The numbering of the pages and paragraphs continue the numbering of the First and Second Reports.

COMMONWEALTH OF AUSTRALIA.

THIRD REPORT OF THE COMMISSIONERS.

To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor-General and Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY :

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

(1) The equitable distribution of the burdens of taxation ;

(2) The harmonization of Commonwealth and State taxation ;

(3) The giving to primary producers of special consideration as regards the assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions ; and

(4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour, in continuation of our First and Second Reports, dated respectively 27th October, 1921, and 13th April, 1922, to report hereunder upon the following subjects coming within the Terms of Reference :—

(16) Comments upon various sections of the Commonwealth Income Tax Assessment Act and Related Matters.

(17) Administration.

(18) Taxation of Interest on State Government Securities and the Income of State Organizations.

SECTION XVI.

COMMENTS UPON VARIOUS SECTIONS OF THE COMMONWEALTH INCOME TAX ASSESSMENT ACT AND RELATED MATTERS.

438. **Co-Operative Societies (Section 3—Definition of Income).**—The *Commonwealth Year Book*, No. 14, 1919-1920, shows that returns had been received from 148 co-operative societies in Australia. The Commission was urged by witnesses to recommend that co-operative societies should not be taxed upon undistributed profits, except so far as those profits include profits from trading with non-members. With regard to trading with their own members, it is usual for the societies to allow a rebate or deferred discount proportionate to the purchases made by the member within each accounting period. The *Commonwealth Income Tax Assessment Act* 1921 amended the definition of " income " in the Principal Act by providing that income shall—

> " not include any rebate received by a member of a co-operative company based on his purchases from that company, where the company is one which usually sells goods only to its own members."

This provision will have a very limited application, as the evidence shows it to be the exception rather than the rule for a co-operative company to confine its sales to its own members. In any case, the provision does not touch the main contention of the societies with regard to the taxation of their undistributed profits. For the purposes of such taxation, the Act makes no

distinction between a co-operative and a limited company. The same contention as to the exemption from taxation of co-operative societies' profits was urged before the British Commission on the Income Tax 1920. That Commission came to the conclusion that

> "any part of the net profits of the societies' transactions which is not actually returned to members as dividend or discount is a profit which should be charged to Income Tax."

439. With regard to cases where the societies deal merely with their own members, that Commission remarks that

> "when the discount or rebate on purchase price has been returned to the purchaser, we are of opinion that the surplus remaining in the hands of the society is a true trading profit."

With this view we concur.

440. **We recommend**-

(1) That the amounts carried to reserve by a co-operative society, that is, a society which usually sells goods to its own members, should be taxed as at present - that is, in the same way as are the undistributed profits of a company.

(2) That upon so much of the amount carried to reserve as is subsequently rebated to the members based on their purchases from the society, the society shall be entitled to a refund of the tax paid thereon.

(3) That where a member of a co-operative society is allowed to deduct the amount of his purchases from the society from his assessable income, he shall be required to bring into account the amount of the rebate received in respect of such purchases.

441. **Annuities (Section 3—Income from Property).** At present an annuitant is liable to Income Tax upon the whole of each year's payment of the annuity. It was represented to us that this involves taxation of capital. The case was put thus by a witness on behalf of the Life Offices' Association for Australasia—

> "Where an annuity has been purchased from a life assurance company, every payment of annuity contains an instalment of capital as well as an amount for interest, and to tax the whole payment is to tax capital as distinct from income. It has been settled by judicial decision that capital, when it can be identified, is not taxable as income. In the case of the purchase of an annuity certain, *i.e.*, an annuity payable for a fixed term of years, the individual actually receives in each annuity payment repayment of part of his own capital, together with interest on the capital remaining unrepaid, and the amount of capital and interest in each annuity payment can be actually determined. In the case of the purchase of a life annuity, the annuitant pools his capital with that of other life annuitants, and in effect agrees to a common distribution of capital out of the pool on a basis which, according to the expectation of life of each individual when he purchases the annuity, would secure to him the repayment of his capital during his life-time. The essential fact is that the annuity payment is not solely income; in part it is return of capital, in part true income; and in any individual case the amount of the part which is capital is the amount of the annual premium which the individual would have to pay to secure, by means of life assurance, repayment at his death of the amount of capital he applied in purchase of his annuity."

442. In our opinion, the contention of the Life Offices' Association is justly based, and

443. **We recommend that so much of each payment of an annuity purchased by the annuitant as is actuarially certified to be a part return of capital be allowed as a deduction from assessable income.**

444. **Reciprocal Exchange of Information between Taxation Authorities, Commonwealth and State.**—Section 9. The first two sub-sections of this Section make it an offence for officers to enter upon their duties before making a declaration of secrecy, providing a penalty for breaches of this provision. Sub-section (3) of this Section reads:—

> "Notwithstanding anything contained in this Section, the Commissioner, the Assistant Commissioner, or a Deputy Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties to the Commissioner of Income Tax for any State who has been authorized by legislation to afford similar information to the Commissioner, the Assistant Commissioner, or a Deputy Commissioner, or to the Commissioner of Pensions for the purpose of the administration of any law of the Commonwealth relating to pensions."

In the Acts of New South Wales and South Australia there is no corresponding provision In Victoria and in Queensland the Income Tax Acts allow communication by the State Commissioner of information to the Commonwealth authority and other State authorities without condition. In Western Australia the Income Tax Act allows for communication to other Income Tax authorities who are authorized by legislation to reciprocate. The Tasmanian Act allows communication without condition to the Commonwealth, but only subject to reciprocity in the case of a State authority.

445. Full power of inter-communication between all Income Tax authorities in Australia for the purposes of administration of Income Tax legislation is, in our opinion, very desirable. A striking illustration (referred to in paragraph 271 of our Second Report) of the loss of revenue which may occur in the absence of such a provision was given in evidence by the State Commissioner for Income Tax, New South Wales. He stated that a certain taxpayer had rendered a return and had been assessed thereon, the tax amounting to a little over £20. The Commissioner became aware of certain facts which induced him to conduct an investigation into the taxpayer's affairs. The result of the investigation was to disclose that the taxpayer's income for the year in question had been about £280,000, and the amount he was called upon to pay was £22,500. The Commissioner, giving evidence, was asked whether he had communicated the facts and the name of the taxpayer to the Commonwealth Commissioner or his representative in New South Wales. The reply was that he had not done so, as his Act gave him no authority to make such a disclosure. **It appears to us a matter of urgent importance that as between the Commonwealth and all States and as between all the State authorities there should be the fullest exchange of information necessary for the protection of the revenue.** We suggest that this matter be pressed upon the Governments of those States in which no legislative authority exists for reciprocal interchange of information with regard to Income Tax matters.

446. **Subdivisional Sales upon Long Terms—Method of Taxing Profits.**—Witnesses representing a company whose operations consist of the purchase of lands, their sub-division, preparation for settlement, construction of roads, &c., and sale upon long terms, stated that the method of taxing income of the company from sales of such lands in the State (Queensland) is to regard the total amount represented by the sale as income of the year in which the sale is made, although only one instalment would be paid in that year. It is common practice for the company to allow payment by instalments to extend over ten years, and the witnesses urged that for Income Tax purposes no amounts should be regarded as income of any year except those actually received during that year. This is the practice of the Commonwealth Income Tax Department. It may be argued that the method adopted by the State is in consonance with that generally adopted in relation to sales of merchandise—for example, a wholesale house sells a considerable portion of its goods upon say three or six months' terms, and at the end of any financial year there will be a "carry over" of such transactions the bills in respect of which have not matured, though for purposes of the trading account the amounts represented by the sales are shown as sales of the year in which made.

447. Looking at the matter from a purely theoretical point of view, it might be said that the practice adopted with regard to merchandise is sound, and should rule all credit transactions. As far as convenience is concerned, the practice adopted with regard to merchandise is probably the best. With regard to sales of land on credit terms extending over a number of years, the convenience would lie the other way, as the books of a company conducting such business would not be kept in the same manner as those of an ordinary mercantile business.

448. In our opinion, the practice adopted by the Federal Department of accepting the profit upon the amount actually paid during the year in respect of land sold upon long terms as the income of the year is the more convenient and the more equitable with regard to the taxpaying vendor.

449. **We recommend** this practice for general adoption.

450. **Revenues of Municipal Corporations or other Local Governing Bodies or of Public Authorities.**—Section 11 (1) of the Commonwealth Income Tax Assessment Act exempts from Income Tax the revenues of Municipal Corporations, &c. Representations were made by some witnesses with regard to the profits from trading enterprises conducted by municipalities or other public bodies, and it was contended that the present statutory exemption should be repealed, in order to make such profits taxable.

451. The general objection to the present exemption of those profits from taxation put forward was that it entails unfair competition with private enterprises, the profits of which are taxable. In some cases the position is not quite accurately stated by the phrase "unfair competition," as it may, and often does, amount to an exclusion of private enterprises from a particular area. For example, the electric light undertaking of a City Council is generally a monopoly within its own area.

452. Another objection of less force which has been stated is: A taxpayer in one Municipality which profitably conducts an enterprise such as electric lighting is at a disadvantage as compared with a taxpayer in another Municipality which from lack of opportunity or other causes is unable to realize profits in that way.

453. An objection somewhat similar to that just mentioned is that the citizens, say, of a capital city, may be making profits from charges levied upon persons who are not residents of that city, or even of the State. An illustration is the conduct by the Melbourne City Council of stock sale-yards to which cattle and sheep are brought, not only from Victoria, but from New South Wales and other States. In such instances the stock fees at the Council's yards may be paid by owners of the stock, who may be resident outside Victoria altogether. It is urged as unfair that any profits so arising should be applied, as they of course would be, either to some relief from Municipal taxation of the citizens of Melbourne or for some Municipal purpose of which the citizens would primarily receive the benefit. In either case it would generally be difficult or impossible to trace any definite pecuniary benefit to any citizen. Again, any reduction in Municipal rate, whether due to the realization of profit from a Municipal undertaking or to some other cause, is reflected in the income tax return of a taxpaying citizen. Municipal Rates being allowed as a deduction from assessable income, if the rate is lowered the taxable income will be increased, and consequently a larger income tax will be payable.

454. Two other points in relation to the matter may be mentioned, viz: First, that the stock-owners who use the municipal yards are receiving valuable services for the fees paid; second, that the Municipality is not in the position of an absolute monopolist in such matters—that is, it could not prevent the construction and use of yards by the stock-owners themselves in some convenient locality outside the City boundary.

455. In Great Britain the Income Tax Law does not exempt from taxation the revenues of Municipal and other bodies. The British Royal Commission on the Income Tax, 1920, gives the following "summary of the way in which local authorities are dealt with for Income Tax purposes":—

> "The trading profits of a corporation are assesssed to Income Tax under the ordinary rules. The property which it owns is also chargeable under Schedule "A,"* or if exemption is granted (*e.g.*, in respect of public schools and premises occupied for the administration of justice), that exemption is not one that is peculiar to corporations."

But behind any question of practice is the basic question whether the profits of public bodies should be taxable or exempt. On this point the British Commission says:—

> "The fundamental question whether a Municipal corporation ought to pay Income Tax at all was not pursued by the witnesses, possibly because they recognised that although the burden of the Income Tax paid by a corporation ultimately falls upon the members of the local community, the ratepayers are in many cases liable to Income Tax, and any burden of taxation removed from them as ratepayers must necessarily be thrown upon them, though not necessarily in the same proportions, in their capacity as taxpayers. It may also have been in their minds that it would not be expedient to claim exemption from Income Tax for public bodies which are actually or potentially competitors of private persons or companies carrying on similar trading undertakings.
>
> "But although this primary question was not raised, a number of important changes were advocated, one of which was that in assessing a corporation a distinction should be drawn between those of its activities which may be regarded as undertaken for national purposes and those which are purely local. There is, in our opinion, no sufficient reason for exempting from Income Tax most of the properties which are devoted to local public purposes."

456. It will be observed that the opinion given by the British Commission refers to "most of the properties devoted to local public purposes." That Commission was faced with the view that some properties of a local authority may be of an importance other than local—for example, they came to the conclusion—

> "that sewers and sewer mains should be exempted from liability to Income Tax assessment, not only because the present administration of the Income Tax Law, following the practice of rating authorities, produces inequitable results as between different localities, but also because the provision of proper sewerage facilities may be regarded as essential to national as well as to local public health."

---

* NOTE.—Tax under Schedule "A" is charged in respect of the ownership of landed property in the United Kingdom, and is based upon the annual value.

457. The passage just cited illustrates the difficulty of determining whether the benefits of a particular public utility, administered primarily in the interests of citizens within an area of local jurisdiction, do or do not extend to citizens outside that jurisdiction. The consideration, that so many services provided by public authorities have this wider extension of benefit, in our opinion, strengthens the view hitherto taken in the Commonwealth that the revenues of public bodies should be exempt from taxation.

458. In the case where a public authority carries on an undertaking in which it becomes a competitor with private enterprise, or by monopolistic power excludes private enterprise from a particular area, witnesses expressed the opinion that the profits derived from such undertaking should be subject to income taxation.

459. There is a general agreement that some particular services—for example, water supply, supply of gas, or electric light, &c. —are public utilities, which in principle may properly be handed over to some public authority.

460. Where the line of unfair competition begins, or upon what class of enterprise a communal authority should refrain from entering, are questions which are outside the scope of our Terms of Reference.

461. The prime justification, in our opinion, for the exemption from Income Tax of revenues of Municipal and other public authorities lies in the fact that they may properly be regarded as exercising a delegated power which in a less-developed community would or could be exercised directly by the State.

462. Another point in favour of the retention of the present exemption of revenues of public bodies is that, where profits are made by them in the conduct of some public service, those profits cannot be used other than for some purpose within their power as a public body.

463. **We are of opinion that the present exemption from Income Tax of the incomes of public authorities should be retained.**

464. **Cricket Associations.**—Section 11 (1) (*j*) exempts from taxation—

> " the income of any society or association not carried on for the purposes of the profit or gain to the individual members thereof, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing or industrial resources of Australia."

465. The New South Wales Cricket Association, through its representative, gave evidence in support of a claim for exemption of the revenues of the Association from Income Taxation. The reasons advanced were generally that the Association does not exist for the purpose of any individual gain, and that its activities are entirely devoted to the promotion of a manly sport which is beneficial to the community. The taxable revenue of the Association is chiefly derived from gate money collected in respect of Inter-State or International cricket matches.

466. A side issue introduced into the question is that the public pays Entertainments Tax upon entrance money to such cricket matches. This, however, does not appear to us to affect the question. The amount obtained through the Entertainments Tax is paid by individuals, and the Association is merely the channel through which the amount of tax reaches the taxation authorities. Not at any stage does the amount so paid enter into the real revenue of the Association.

467. It is a clear deduction from the wording of the sub-section that no exemption would be granted where a society is carried on for the purpose of gain to individual members. It seems equally clear that even where that condition-precedent exists, only those Associations will be granted exemption whose purposes commend themselves to the Parliament as of sufficient national importance to justify their inclusion in the exempt list.

468. It will be noted that no Associations whose principal object is the encouragement of sport are at present included in the exempt list, and **we are unable to see any sufficient grounds for recommending the inclusion of any such body.**

469. **Dividends Derived from Capital Profits.** Section 14 (*b*) reads—

"The income of any person shall include

(*b*) dividends, interest, profits, or bonus credited or paid to any depositor, member, shareholder, or debenture-holder of a company which derives income from a source in Australia, or of a company which is a shareholder in a company which derives income from a source in Australia, but not including a reversionary bonus issued on a policy of life assurance:

Provided that, where a company derives income from a source in Australia and from a source outside Australia, a taxpayer shall only be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the company from a source in Australia bears to the total profits of the company:

Provided further that, where a company distributes to its members or shareholders any undistributed income accumulated prior to the 1st July, 1914, the sum so received by the member or shareholder shall not be so included as part of his income. For the purposes of this proviso, amounts carried forward by a company in its profit and loss account, appropriation account, revenue and expenses account, or any other account similar to any of the foregoing accounts, shall not be deemed to be accumulated income; but, where it is proved to the satisfaction of the Commissioner that an amount standing to the credit of a profit and loss account before the 1st July, 1914, has been appropriated by a company for the purpose of crediting a dividend to the shareholders, and the dividend or a part thereof is retained by the company for the purpose of paying for an increase in value or number of shares issued to the shareholders, the shareholders shall not be liable to pay tax on the dividend or part so retained."

470. Dividends, under the above sub-section, are made part of income, and are taxed even in the cases where the dividend is derived from capital profits, *e.g.*, profits made by the sale of a capital asset, such as a building. The profit so derived is treated as capital profit and hence not taxable in the hands of the company, but, on reaching the shareholder, it is otherwise regarded. The principle that income does not change its character when passing from a company to a member of the company is exemplified in Section 11, which provides that income derived by a company from tax-free War Loan is exempt from tax, not only in the hands of the company, but also in the hands of a shareholder, who receives it in the form of a dividend. The principle is also applied by Section 14 (*b*) in respect of income derived by a company from a source outside Australia (not taxable under the Act).

471. **We recommend** that dividends derived from capital profits of a company **which are exempt from income taxation in the Company's hands** be exempt in the shareholders' hands.

472. **Freedom from Taxation of Income accrued prior to 1st July, 1914.**—Second proviso to Section 14 (*b*).—The evidence disclosed a considerable amount of dissatisfaction among taxpayers with the form and effect of this second proviso. Owing to the lapse of time since 1st July, 1914, the transactions affected by this proviso must be diminishing in number, but they are still sufficiently numerous to excite protest against the effect of the provision. The first sentence in the proviso is obviously aimed at preventing retrospective taxation, but the additional sentence involves such taxation in certain cases.

473. **We recommend** that the proviso be amended to make it clear that any company income which accrued prior to the 1st July, 1914, shall be free from taxation when distributed to shareholders.

474. **Beneficial Interests under Wills, &c.**—Section 14 (*c*) reads—

"The income of any person shall include—

(*c*) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust."

We are officially informed that an income derived from any of the sources specified in this sub-section is taxed at personal exertion or property rate, according to its origin. The Victorian Act expressly provides that—

"all income subject to tax earned, derived, or received by or arising or accruing to a trustee in his representative capacity, or received or receivable from a trustee by a taxpayer as a beneficiary, shall be deemed and be taken to be the income the produce of property, and shall be liable to tax accordingly."

475. A Victorian taxpayer taxed in respect of a beneficial interest under a will, the income being derived from a business managed by the trustees, would be charged by the State authority at the property rate, and by the Commonwealth authority at the personal exertion rate. Apart from Victorian State taxation, the anomaly arises under the Commonwealth Act that, if a beneficiary under a will or other instrument receives income the source of which is a business, the income in the beneficiary's hands is taxed as income from personal exertion if the business is that of an individual or a partnership, and as income the produce of property if the business is that of a company. It cannot be contended that income in the hands of a beneficiary involves personal exertion on the part of the recipient in the sense of the definition (Section 3) of the Commonwealth Act, and, **in our opinion, it should be regarded as property income and taxed accordingly.**

476. **Life Assurance Companies' Taxation.**—Under Section 16 (1) of the Act, life assurance companies are exempted from taxation in respect of premiums paid upon the policies issued by the companies. Other revenues are taxable, allowance being made for expenses of management. The State legislation on this subject varies considerably. The following are the bases of the State taxation:—

New South Wales ..	Income from real property mortgages, less proportion of total expenses in New South Wales obtained by using ratio of taxable income to total income.
Victoria	30 per cent. of "premium income" (ordinary department). 15 per cent. of "premium income" (industrial department).
South Australia ..	Portion of the surplus divisible amongst policy-holders which the Actuary certifies to be attributable to South Australia.
Tasmania	20 per cent. of "premiums received."
Queensland	25 per cent. of "premiums collected during the year" (ordinary department). 15 per cent. of "premiums collected during the year" (industrial department).
Western Australia ..	"Interest on investments," less a deduction for expenses.

477. Taxation of life assurance companies on a percentage of the premium income, while simple, cannot be regarded as scientific or as practically satisfactory. The Life Offices' Association for Australasia pointed out that this method—

"ignores the fact that the ratio of surplus to premium depends upon the age of the institution, and assumes [wrongly] for example that an institution ten years old will have the same ratio as one 40 years old."

The Association further points out that, under this method, if the percentage rates be high, the stability of a young institution may be imperilled, as for the first few years a large proportion of its premiums must be absorbed in expenses. A further disadvantage pointed out is that this method works inequitably between companies having a preponderance of whole-life business (which probably yields the larger surplus) and those having a preponderance of endowment assurance. The Association asked for complete exemption from income taxation of all life assurance revenues. We do not feel justified in indorsing that request.

478. **In our opinion, the method of taxing life assurance companies prescribed by the Commonwealth Act is the method which should be adopted by all Australian authorities.**

479. **Deductions from Assessable Income.**—Apart from the special deductions commonly known as General Exemptions (£156 in the case of a person who is married and £104 in the case of a person who is not married), the allowable deductions from assessable income are enumerated in Section 18 of the Commonwealth Income Tax Assessment Act. During our inquiry, many witnesses made suggestions for amendment of one or more of the sub-sections of which that section is composed. It will be convenient to quote each sub-section separately, and to make such references to evidence and such comments as may seem appropriate.

480. **Section 18 (1) (a)** reads—

> "18. (1) In calculating the taxable income of a taxpayer the total assessable income derived by the taxpayer from all sources in Australia shall be taken as a basis, and from it there shall be deducted—
>
> (*a*) All losses and outgoings, not being in the nature of losses and outgoings of capital, including commission, discount, travelling expenses, interest, and expenses actually incurred in Australia in gaining or producing the assessable income."

The wording of sub-section (*a*) has recently been considered by the High Court in an Appeal case (Alliance Assurance Co., appellant, and Federal Commissioner of Taxation, respondent, 29 C.L.R., 424). The High Court held that—

> "The words 'losses and outgoings' are not qualified by the words 'incurred in Australia in gaining or producing the gross income', and that those latter words refer either to the word 'expenses' only, or at most to the words 'commission, discount, travelling expenses, interest and expenses'."

Each of the State Acts has provisions similar in general effect to those of the Commonwealth Section 18 (1) (*a*) above quoted. The Queensland Act specifically includes among losses and outgoings interest paid in respect of money borrowed and used in the production of income which is not exempt from tax and interest actually paid on any mortgage of residence. Tasmania has similar provisions with regard to interest on borrowed money used for purposes of the business, and both those State Statutes provide that where interest charges are payable to persons residing beyond the State, the person paying same will be deemed to be the agent of the person entitled to receive same and liable to pay Income Tax thereon.

481. Witnesses referred to many forms of expense which they contended should be allowed under Losses and Outgoings, or should be allowed to a greater extent than at present. Some of these forms of expense are—

(1) **Legal Expenses.**—The Commonwealth Department of Taxation allows certain legal expenses as deductions. The principle which, it is stated, guides the Department is whether the expense is (in the words of Section 18) "actually incurred in gaining or producing the assessable income." We are informed that among the legal expenses allowed are those incurred by way of cost of suing for recovery of trade debts and charges for advice upon interpretation of contracts.

Among the expenses not allowed as deductions are—

(*a*) Costs in actions against the Department.
(*b*) Costs in prosecuting or defending actions for breach of contract.
(*c*) Costs in proceedings before Arbitration Courts or similar tribunals.
(*d*) Costs in libel or slander actions.
(*e*) Expenses incurred in the preparation of leases, mortgages, transfers, &c.

The disallowance of these items was the subject of much complaint. Many witnesses urged that all legal expenses should be allowed as deductions, and contended also that some at least of the disallowed items are expenses "incurred in gaining or producing the income." A further consideration was that, if some of such expenses cannot strictly be considered to be "incurred in gaining or producing the income," they are incurred in **"protecting"** the income. The Act does not specify protection of income as a ground for deduction of an expense, but the evidence disclosed a widespread opinion among commercial men and others that expenses legitimately incurred for protection of income should be deductible. In some cases it is difficult to draw the line between gaining or producing and protecting income. For example, it was urged upon us that the expenses of actions for breach of contract (whether the taxpayer is the plaintiff or the defendant) should be allowed, on the ground that the protection of income should be regarded as the direct equivalent of the production of income. The same argument may be used with more or less force in relation to other judicial proceedings. (Some expenses of an occasional character, and which are incurred solely for the protection of income, for example, the expenses of transferring starving stock from one district to another, the cost of hiring country, &c., are, and always have been, recognised as legitimately deductible.) Another item of legal expense frequently referred to in evidence was that of proceedings before Arbitration Courts, Wages Boards, &c. At present no deductions on this account are recognised. Representatives of employers stressed the view that these expenses arise out of statutory obligations, and that it would be only reasonable to regard them as incurred in producing income. Items such as the cost of preparation of leases, mortgages, transfers, &c., are in ordinary businesses quite infrequent, but, where they occur, it seems reasonable that they should be treated as business expenses and consequently included among deductions. As shown above, the departmental practice already recognises some expenses incurred in the

protection of income as properly deductible. **In our opinion, this recognition should be extended to all cases where the Commissioner is satisfied that legal expenses have been incurred *bona fide* for the protection of income.**

Legal expenses are specifically deductible from assessable income under the State Statutes of Victoria (Section 19 (1)) and Queensland (Section 13 (1) (X)). The Queensland provision is limited to legal expenses incurred in collecting debts owing to persons in business or in preparation of leases or in connexion with any award relating to the taxpayer's business or incurred in drawing up agreements for the sale or purchase of goods or service agreements with employees. The only limitation in the Victorian Act is that the legal expenses shall have been incurred in producing income. The Statutes of other States contain no provisions expressly allowing the deduction of legal expenses from assessable income.

(2) **Removal Expenses.**—Among commercial witnesses who referred to this subject, there was unanimity of opinion that expenses incurred in necessary removals from one place of business to another should be regarded as permissible deductions. At present, the practice of the Department is to disallow such claims. Business removals usually occur from one of two causes—either the expiry of the lease or the necessity for obtaining more suitable premises. To these may be added occasional temporary removals due to alterations or reconstruction of premises to which it is intended to return. **It seems to us that these expenses may be regarded as incurred with a view to gaining or producing income, and on that ground are properly allowable as a deduction.**

(3) **Alterations to Buildings, Plant, &c.**—The cost of fitting up of leased premises, alterations to buildings, &c., is, we are informed, not generally regarded by the Department as an allowable deduction, since it is usually in the nature of capital expenditure. Where that is clearly the case, **in our opinion no alteration of the departmental practice can be recommended.**

(4) **Cost of New Machinery, Replacements, &c.**—Requests for the inclusion of this expenditure as an allowable deduction came specially from representatives of farmers. The Department, we are informed, considers all such expenditure to be clearly capital expenditure, upon which no deduction can be permitted. In this case, as in that dealt with in the preceding paragraph, **we do not recommend any alteration of the present practice.**

(5) **Deduction of 5 per cent. Capital Value of Agricultural Holdings.**—The suggestion was made that farmers be allowed to deduct 5 per cent. of the capital value of their holdings. The argument in support of this suggestion was that, where a farmer leases land, he is allowed to show the rent as a deduction; but, where he is the proprietor, no deduction is allowed, though (it is said) he is in effect paying rent equal to the current rate of interest upon the capital value. The Act indeed embodies a provision which is practically the converse of the claim under consideration, as under Section 14 (*e*) a taxpayer is required to include in his assessable income 5 per cent. of the capital value of land, &c., owned and used or used rent free by himself for the purpose of residence or enjoyment. The case of the farmer using his own land for cultivation is said to lead to an anomaly, as an owner of such land may also lease adjoining lands and be allowed deduction of the rent of that portion of his farm, while receiving no deduction in respect of the proportion owned. However, **we regard expenditure in the purchase of land as capital expenditure, and, for that reason, cannot recommend any deduction of the nature suggested.**

(6) **Cost of Netting and Eradication of Pests.**—The cost of netting is treated as capital expenditure, except in the case of netting used for repairing. With regard to the eradication of pests, the practice is to regard expenditure under this heading as capital expenditure if at the time of purchase the land is encumbered (for example, with prickly pear), with the consequence that no deduction is allowed. Expenses of maintaining the land in the improved condition are allowed. In these cases we consider the departmental practice to be consistent with the general scheme of the Act, and **do not recommend any change.**

(7) **Subscriptions to Trade Associations, Agricultural Shows, &c.**—This is an instance where some part of the claim put forward by witnesses is already recognised by the Department—for example, subscriptions to Trade Protection Associations are allowed, also subscriptions to Trade Journals, but not subscriptions to Trade Associations, except to the extent to which the subscriptions are regarded as defraying the cost of business functions performed by the associations on behalf of their members. Many traders, it was stated, are continually called upon to subscribe to or furnish free material for agricultural and similar shows, and it was urged that this should be regarded as an expense of advertising. It is not at all clear that expenses of this kind are advertising in the ordinary sense, unless as a result of the subscription or donation the business of the firm is in some way prominently brought before the public. Expenses of exhibiting at an Agricultural Show are recognised as a business outgoing. **The departmental practice under this heading, in our opinion, is as liberal as can fairly be required.**

(8) **Cost of Preparation of Taxation Returns.**—Witnesses stated that in very many instances taxpayers find it necessary to employ accountants or others outside their own staff to prepare Income Tax returns, and it was urged that all such expenses should be regarded as deductible. It was admitted that in many cases the auditor of the business prepares the returns, and, in such cases, the fees for auditing, which are allowable deductions, include the cost of preparation of the returns. **In our opinion the cost of preparation of taxation returns should be allowed.**

(9) **Cost of Issue of and Discount upon Debentures.** Company representatives urged that the cost to a company of the preparation and issue of debentures, and also discount which sometimes has to be allowed to subscribers of debentures, should be deducted from assessable income. The two claims may be looked at separately. The preparation and cost of issue of debentures is the cost associated with a loan of money. While no income may result in the year of issue, **the expense of the issue appears to be a legitimate business expense, for which, in our opinion, provision might reasonably be made, to enable it to be treated as a deduction from assessable income.** The question of the discount upon debentures is on another footing. Neither this nor the cost of issue are at present treated as allowable deductions, but the discount may, we think, be fairly regarded as an addition to the interest payable for the borrowed money, and as interest paid is a deductible charge, it would seem consistent to allow the discount also. There is, however, this objection, that if the whole of the discount be allowed in the year of issue, it may, by lowering the rate of tax upon the total income, have a disproportionate effect upon the amount of tax payable. **It would, therefore, be reasonable to divide the amount of discount over a period not exceeding the currency of the debentures, and allow as a deduction in each year of the period the annual proportion of the whole amount.** In the case of interminable debentures or debentures having a long period of currency, an arrangement should be made with the Commissioner as to a reasonable period over which the deductions should be distributed.

(10) **Interest on Borrowed Money.**—Where a trader borrows money for the purposes of his business by way of overdraft or otherwise, he is allowed to deduct interest. Representations were made to the Commission that persons whose income is derived from salary or wages are at a disadvantage as compared with traders in this respect, that, if the salaried taxpayer borrows money—say, to meet medical expenses—he is not permitted to treat the interest paid as a deduction from assessable income; whereas the trader, though borrowing for the same purpose—for example, by way of overdraft—may include the interest as interest paid on account of business obligations, and thereby escape tax. The Department allows interest as a deduction to non-traders in cases where there is some taxable return from the investment of the borrowed money. Where the investment is in the nature of a continuing business, the whole of the interest is allowed as a deduction. If in any cases traders act as suggested by witnesses, inequities would arise, but, in our opinion, **no remedy can be suggested which would not be likely to create anomalies at least as serious as those which it would cure.**

(11) **Interest received from Government Loans.**—A representative of a large financial institution urged that interest received from Government loans (in addition to those which by Statute are tax-free) should be allowed as a deduction from assessable income. **We are unable to recommend this concession.**

(12) **Losses of Original Subscribers on Sale of Commonwealth War and Peace Loans.**—It was urged that original subscribers to Commonwealth War and Peace Loans invariably find that a loss is incurred if it becomes necessary to realize their bonds in the open market. The suggestion was made that any losses so incurred should be treated as a deduction from assessable income. **We are unable to recommend this concession.**

(13) **Interest upon Deposits in Banks and Savings generally.** A correspondent who did not present himself for oral examination suggested that, as a matter of public policy, with a view to encouraging the growth of capital, and thereby providing the means of employment and production, interest derived from deposits in banks or other financial institutions should be freed from Income Taxation. This suggestion is part of a larger question presented to us by professorial witnesses, who took the view that additions to capital constitute the most important form of production, and that, as capital in the community is only built up by what is saved, the policy of taxing authorities should be to treat all savings as non-taxable in the year in which they accrue. A special case of this nature frequently urged by accountants and company representatives is that of the undistributed profits of companies. Witnesses suggested that, if a company distributes say 60 per cent. of its profits of the year and retains the remaining 40 per cent., the profits so retained will almost certainly be used in such a way as to stimulate production and lead in subsequent years to increased taxable income. **We do not feel justified in accepting the wider proposition nor in recommending the specific exclusion from assessable income of interest on deposits or of the undistributed profits of companies.**

482. **Crown Leaseholds.—Increased Rental due to Re-appraisement—How deductible.**—General Order No. 1011, issued by the Commonwealth Commissioner, states the practice of his Department in respect of this matter in these terms:—

> "The rental of a Crown leasehold was re-appraised, the increase dating back to four years previously. The taxpayer sought to deduct from each of the previous years' income the increased rent payable retrospectively for each year.
>
> "It was decided that the rent could only be deducted in the year of actual payment, since the increase was not in fact incurred *in* the previous year. It was incurred in the income year as an outgoing in that year measured in amount only by a newly-created liability extending to certain previous years."

483. Opinions placed before us differed as to whether the practice laid down in the Order cited is the correct one, or whether the deduction should be made proportionately from each previous year's income, as claimed by the taxpayer quoted in that Order. Which method would be more favorable to the taxpayer would depend upon the relative amounts of taxable income in the various years in question. The inclusion of the whole of the amount of the rent retrospectively charged, as a deduction in a year in which income was large and rate of tax consequently high, would considerably reduce the taxpayer's burden. On the other hand, if the year in which payment was made was a year of loss, or of relatively low income, an opposite effect would be produced. Similarly, if the amount were distributed over the various years (but of course with less effect, the amount in each case being less) the effect on the rate in some cases would be favorable, in others unfavorable, to the taxpayer, but the effect would be less, the amount in each year being less.

484. It will be seen from paragraph 490 that in discussing section 18 (1) (*b*) of the Act we have taken the view that any sum refunded on account of previous overcharge of tax should be related to the year of original assessment, and we pointed out in that paragraph that in the case where the Commissioner opens an assessment of a previous year for the purpose of making an additional demand, that demand is related back to the year of original assessment.

485. **In our opinion that principle is sound, not only with regard to demands and refunds, but also with regard to the case now under discussion.**

486. **We recommend** an alteration of the present practice of the Department to provide that, where retrospective increased rent charges upon a Crown leasehold are levied, the taxpayer should be allowed to deduct the increased rent from each of the years to which the increase applies, any necessary adjustments being made accordingly, the same principle to apply where the rent charges are retrospectively decreased.

487. **Section 18 (1) (b)** reads—

> . . . . there shall be deducted—
>
> "All rates and taxes, including State and Federal land taxes and State income tax, actually paid in Australia by the taxpayer during the year in which the income was received, but not including any tax paid under this Act but including the amount of war-time profits tax payable in Australia in respect of any part of the income:
>
> "Provided that when a taxpayer receives a refund of the whole or part of any of the taxes mentioned in this section the amount of such refund shall be brought into account as income in the year in which the refund is received;"

488. Some witnesses urged that this sub-section should be amended to include among the deductions the amount of the Commonwealth Income Tax. Consideration of this suggestion shows that its adoption in the Commonwealth Act would lead to an absurd position, and **we have no hesitation in dismissing the suggestion.**

489. Another change suggested was that the amount of Commonwealth Land Tax paid should be allowed as a deduction from the Commonwealth Income Tax, and not, as at present, from the assessable income. **We are unable to support this suggestion.** It will be noted on reference to paragraph 8 that New South Wales is the only State in which the Federal Land Tax is not allowed as a deduction from assessable income. We have elsewhere stressed the advantages which attach to uniformity in the various Income Tax Assessment Acts of the Commonwealth and the States. In the suggested uniform Act for the Commonwealth and State Income Tax Assessment which was prepared by the Conference of Commonwealth and States taxation officers in March, 1917, Federal Land Tax (also State Land Tax) was specifically allowed as a deduction. **We concur in the opinion that the allowance is one which should be made.**

490. It will be observed that under the proviso to this sub-section any sum refunded on account of previous overcharge of tax must be brought into account as income in the year in which the refund is received. This sometimes leads to a result very unfavorable to the taxpayer, inasmuch as the rate of his tax in that year may be considerably greater than that of the year in which the overcharge was made. In a converse case—that is, where the Commissioner re-opens an assessment of a previous year for the purpose of making an additional demand—that demand is related to the year of original assessment. This appears to us the proper principle to apply, and **we recommend that the proviso in question be amended accordingly.**

491. The State Statutes on the subject of this sub-section are as follows:—

New South Wales.—The Income Tax Act allows deduction from assessable income of the rates and taxes (except State Income Tax) imposed by Acts of the State Parliament or by any authority constituted by any such Act.

Victoria.—The Victorian Act includes among deductions all taxes payable under any Act of the Parliament of Victoria except the Income Tax, also the amount of Land Tax paid to the Commonwealth upon land situated within the State.

Queensland.—The Queensland Act allows as deductions all rates and taxes (except Commonwealth and State Income Tax) and also the amount of Commonwealth Land Tax paid in respect of land situated within the State.

South Australia.—All rates and taxes paid in earning income within the State, except State Land and Income Taxes. The State Act includes a provision for deduction of the amount of Income Tax, including War-time Profits Tax imposed by the Commonwealth Acts, so far as they affect income or war-time profits arising in South Australia.

Western Australia.—In Western Australia rates and taxes, including State and Federal Land Tax and Federal Income Tax, are allowed as deductions, but not State Income Tax.

Tasmania.—All rates and taxes (other than Income Tax, State and Federal, and State Land Tax) are allowed as deductions. A taxpayer residing in the State is allowed to deduct the amount of Income Tax paid elsewhere upon income derived from a source outside the State and assessable under the State Act. A deduction is also allowed of any amount paid elsewhere by way of Land Tax in respect of land from which income on account of mortgage is derived.

492. **Section 18 (1) (c)** reads—

. . . . there shall be deducted—

"Every premium or sum paid by the taxpayer on the insurance on his own life or that of his wife or children or for a deferred annuity or other like provision for his wife or children or in respect of any fidelity guarantee or bond which such taxpayer is required to provide in the exercise of his business:

"Provided that in no case shall any deduction be allowed under this paragraph beyond the sum of Fifty pounds in the aggregate or for any premium or sum paid in respect of any such insurance, annuity, or other provision effected outside Australia;"

493. There was some criticism of this sub-section in the evidence, on the ground that it gives a preference to a particular form of saving—that is, life insurance—and that this form of saving is not open to everybody, as some persons are rejected by the insurance companies. With regard to the latter point, a witness in one State informed us that the experience of the largest life insurance company operating in that State was that about 6 per cent. of applicants for life insurance are rejected for physical reasons.

494. Another point in relation to the sub-section was that of the amount to be allowed as a deduction, which under the present Act is **£50.** Some witnesses suggested that this amount should be increased, while in one or two cases its decrease or abolition was suggested. The same amount is allowed as a maximum deduction in all the States except South Australia and Tasmania. In those two States no deduction is allowed on account of life insurance premiums.

495. The figures published by the Commonwealth Commissioner of Taxation in his Seventh Annual Report show that of the total deductions made under this sub-section about two-thirds are in respect of taxable incomes not exceeding **£400.**

496. The form of saving with which life insurance was most often contrasted was that of Savings Bank deposits, and some witnesses urged that such deposits should be placed upon the same footing as life insurance premiums. In our opinion, life insurance may be distinguished from other forms of saving in that:—

(*a*) It provides immediately after payment of the first premium a financial protection for the taxpayer's family, which would probably be attained through other forms of saving only after the lapse of many years during which savings were continually being made.

(*b*) It is usually not possible to withdraw the whole of the moneys invested in this way during the currency of the insurance, nor is the process of obtaining the surrender value under a life policy as simple as the withdrawal of deposits from a bank; and, partly upon this ground and partly because of the sentiment associated with life insurance, it is very much more likely that life insurance once entered upon will be continued than that a deposit will be allowed to remain and be continually added to through a long term of years.

(*c*) It is not open to the same abuse as would be Savings Bank or other deposits for such deposits might be made immediately before the end of the financial year, for the purpose of claiming a deduction in the Income Tax Return, and then be withdrawn in whole or in part early in the new financial year.

497. The British Commission on the Income Tax (1920) said on this subject:—

"Sound reasons may, we think, be found for the action of the State in singling out this one form of thrift for preferential treatment. . . . The distinguishing feature of life insurance, which probably accounts for what would otherwise seem to be an unfair preference, is that by no other means can the less wealthy taxpayer, who has no accumulated capital in his earlier years of productive effort, secure a proper provision for his dependants. Viewing the matter in a broad and national way, we consider that this reason is sufficient to justify the State in looking with favorable aspect upon life insurance and in treating income that is saved and applied in this manner with special indulgence."

For the above reasons **we recommend the retention of the sub-section in its present form.**

498. **Section 18 (1) (d)** reads—

. . . . there shall be deducted—

"sums expended for repairs to or on that part of any property occupied for the purpose of producing income or from which income is derived or is deemed to have been derived, and for the repair of machinery, implements, utensils, rolling-stock and articles employed by the taxpayer for the purpose of producing income;"

499. The evidence with regard to this sub-section does not suggest the necessity for any change, and **we therefore recommend its retention.**

500. **Section 18 (1) (e)** reads—

. . . . there shall be deducted—

"such sum as the Commissioner thinks just and reasonable as representing the diminished value per centum by wear and tear, during the year in which the income was derived, of any machinery, implements, utensils, rolling-stock and articles used by the taxpayer for the purpose of producing income, such wear and tear not being of a kind that may be made good by repairs:

Provided that where a deduction has been allowed under paragraph (*d*) of this section the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph:

Provided further that where in any business income is set apart by the taxpayer by way of a fund to cover depreciation under any of the headings mentioned in this paragraph, the amount so set apart for the year in which the income was derived shall, subject to the approval of the Commissioner, be the sum to be deducted for depreciation;"

501. All the State Income Tax Acts, except that of South Australia, make provision for depreciation of plant and machinery, and in each case that depreciation is based upon the diminishing value. The Victorian Act allows, subject to the approval of the Commissioner, the amount set apart by the taxpayer for depreciation to be the sum to be deducted on that account. In South Australia the Statute does not provide for depreciation, but for replacement, to the extent of allowing deduction of the cost of any implements, utensils, or articles employed for the purposes of the trade, where supplied "in substitution of others which have become useless from wear and tear." Among the States the Queensland Act alone allows depreciation on account of buildings, bores, wells, and dams. The Western Australian and Tasmanian Acts expressly provide that in no case shall any depreciation allowance be made for buildings.

502. On the question of allowances for depreciation, a considerable volume of evidence was tendered. Very much of this evidence, however, turned upon the question of the rates allowed, which were generally characterized as insufficient. The sufficiency or otherwise of rates of depreciation is a matter with which we do not feel called upon to deal. The Commonwealth Commissioner has issued a comprehensive list of rates of depreciation, and similar but less extensive lists are available in some of the States. While refraining from any attempt to revise the Commonwealth list, **we are of opinion that taxpayers should have the right to go to the Board of Appeal in all cases where they are dissatisfied with the rates fixed by the Commissioner.**

503. Apart from the question of rates, the chief question discussed in the evidence is that of the basis upon which depreciation should be allowed. The Commonwealth "Order" upon the subject prescribes the diminishing value as the basis, and provides further that, subject to the approval of the Commissioner, the allowance made in the books of the taxpayer may be accepted as the sum to be deducted for depreciation. A theoretical objection not without weight urged against the basis of diminishing-value is that machinery, for example, loses value at an increasing rate as it approaches exhaustion, and, further, that the diminishing-value basis provides allowances which are greatest when the need is least, and least when the need is greatest. There is, however, evidence to show that the diminishing-value basis is the one adopted by the great majority of taxpayers for the purposes of their own accounts. The basis of cost value, with regular yearly percentage reductions on account of depreciation, had its advocates. This basis has the great advantage of simplicity, but that may be said to be its only advantage. From the administrative point of view, the cost basis is frequently inapplicable, owing to the absence of reliable records in the hands of the taxpayer.

504. The British Commission on the Income Tax (1920), while recommending the adoption of the diminishing-value basis, recommended also that a taxpayer be given the option of using the cost-price basis where he is able to satisfy the Department that he has kept the necessary records to enable that basis to be applied. **We do not consider it necessary to include such an option in Australian Acts, and recommend the retention of the diminishing-value basis.**

505. One other prominent feature of the evidence was the suggestion, often repeated, that depreciation should be allowed in respect of buildings and fences. In one State—Queensland—such an allowance is made at the rate of 1 per cent. upon the diminishing value, which means that the life of a building is regarded as almost indefinite. Elements in the consideration of the question of allowing depreciation in respect of buildings are that, while the structure as such may suffer some deterioration from age, its efficiency as an income-producing asset for the purposes of a particular business may for a long period suffer no diminution, and its capital value may increase. In Great Britain depreciation is allowed with regard to buildings used for the purpose of housing machinery in motion. The ground for the allowance in that case is that the buildings are exposed to the additional wear and tear caused by vibration. The British Commission, 1920, was urged to extend the allowance to all buildings, including private residences. They, however, thought proper to take into consideration the increase in the capital value of the buildings which frequently arises from the "development or growing prosperity of certain districts," and opposed the extension of the allowance to classes of buildings other than those already provided for. In considering wasting assets, however, the British Commission recommended that some allowance should be made for structures (excluding dwelling houses and cottages) whose estimated life falls short of 35 years, and "whose utility is co-terminous with the duration of the commercial undertaking to which they belong."

506. As shown under the previous sub-section (*d*), the Commonwealth Act, following in this respect the Acts of the States, makes allowance for repairs. In our opinion, this provision is all that is reasonably necessary in respect of both **buildings and fences,** and **we therefore do not recommend the specific inclusion of those items as the subject of depreciation allowance.** In the case of **dams, wells, and underground tanks, we are of opinion that the position is fairly met by the allowance of the cost of labour employed in their maintenance.**

507. **Obsolescence.**—One other matter closely related to depreciation may be mentioned under this heading—that is, an allowance for obsolescence. A representative of a State Chamber of Manufactures urged upon us that a special allowance for obsolescence should be made in cases where it is found necessary to discard machinery or equipment. This was urged partly on the ground that the absence of such an allowance tends to deter manufacturers from "scrapping" machinery which, in the interests of the community, as well as of the particular business, should be replaced by newer and more effective equipment. The witness was unable to quote any particular cases in which the retention of obsolete machinery could be directly attributed to the absence of an allowance for obsolescence, but thought that the granting of such an allowance would be a stimulus to users of machinery in the direction of installing at an earlier date than they otherwise would

the newest and most efficient machines. Such an allowance is made under the British Act to the extent of the difference between the value to which the machine has been written down for Income Tax purposes and its "scrap" value. It may be argued, as against the contention of the witness quoted, that, if there is any loss to the owner of the machinery through obsolescence, it it is a loss of a capital nature, and, further, that machinery is not likely to be scrapped unless there is good reason to believe that the introduction of improved machinery will result in increased profits. There is also the point that very frequently a change is made not for the purpose of installing an improved type of machine, but because a machine of greater capacity for output is required. In such cases, of course, it is probable that the selling value of the machine discarded would be sufficient to prevent any material loss. **We do not feel justified in recommending a special allowance for obsolescence.**

508. **Replacements.**—The Commonwealth practice allows the cost of replacements in respect of certain articles, *e.g.*, bedding, linen, crockery, &c., in hotels and boarding houses, and hospitals. The principle applied appears to be that cost of replacement will be allowed in cases where an allowance for depreciation or for repairs would be inapplicable, either on account of the nature of the article or the impossibility of exercising any check. **The practice should, we think, be continued.**

509. **Wasting Assets.**—In the determination of what constitutes taxable income, the Commonwealth Income Tax Assessment Act, to a limited extent, recognises the principle of the deduction from assessable income of an allowance in respect of the wastage or depreciation of income-producing assets—for example, Section 17 of the Act, which deals with the income derived from mining operations (other than coal mining) provides:—

> "(*b*) the capital expended by the person carrying on the mining operations in necessary plant and development of a mining property from which income has been received (less the distributed and undistributed income derived by that person prior to the financial year in and for which income tax is being levied) shall be divided by the estimated number of years during which payable mining operations may be expected to continue under normal conditions, and the quotient thus obtained shall, in addition to any other deductions allowed by this Act, be deducted from the income;
>
> "(*bb*) as an alternative to the deduction allowable by the last preceding paragraph, there shall, at the option of the taxpayer, be deducted so much of the income of the financial year as is expended in that year for development or is appropriated for development (the cost of which is not deductible under section eighteen of this Act) and for new plant:
>
> "Provided that any of the money so appropriated which has not been expended for that purpose at the end of the year in which it was appropriated shall be liable to tax as income of that year:
>
> "Provided further that no deduction under paragraph (*e*) of sub-section (1.) of section eighteen of this Act shall be allowed on any new plant to which this paragraph applies."

510. Section 18 (*e*) provides that in calculating the taxable income of a taxpayer there shall be deducted from the total assessable income such sum as the Commissioner thinks just and reasonable as representing the diminished value per centum by wear and tear during the year in which the income is derived of any machinery, implements, utensils, rolling-stock, and articles used by the taxpayer for the purpose of producing income.

511. Section 20 (i) provides that—

> "where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee under a lease or the assignee or transferee of a lease) has paid any fine, premium or foregift, or consideration in the nature of a fine, premium or foregift for a lease or a renewal of a lease, or an amount for the assignment or transfer of a lease o premises or machinery used for the production of income, the Commissioner may allow as a deduction for the purpose of arriving at the income, the amount obtained by dividing the sum so paid by the number of years of the unexpired period of the lease at the dat the amount was so paid."

512. Beyond the instances covered by sections 17, 18 (*e*), and 20 (*i*) the Act does no recognise as an allowable deduction from assessable income any provision for the amortisation o the capital value of an asset that wastes in the production of income.

513. The theory underlying the claim for an allowance in respect of the depletion or wastage, by whatever term known, of income-producing assets, is that taxable income does not properly arise till after due provision has been made for the return of the original capital expended or invested. This would necessarily involve an annual charge against the assessable income of such amounts as will in the aggregate equal the original outlay by the time the value of the asset is exhausted.

514. The view has been advanced that as the principle of making an allowance in respect of wasting assets is recognised in the Income Tax Act, the application of that principle should be made general.

515. The British Royal Commission on the Income Tax 1920 realized the difficulty which frequently attends the attempt to translate sound theoretical principles into practice. They stated in the section of their Report dealing with the subject of Wasting Assets :—

> "On a theoretically perfect basis of assessment, it is possible that regard should be had, not only to the wastage of the material asset whence the income emerges, but also to changes in its value occurring during its use." (Par. 183.)
>
> "We think that in that practical world which alone can be considered for the purposes of taxation, the income which represents the taxable faculty is not a mathematical abstraction but that net receipt which, in the hands of its possessor, is usually regarded as income, that is to say, as a receipt out of which current expenditure may be met, subject possibly to some general saving, but not (either in theory or practice) subject to any specific appropriation for the replacement of the capital which is used in earning the income, and which over a long period of years may waste in such use."

516. The British Commission found it impossible to make any general recommendation that from the income produced by any asset allowance should be made for the amortisation of its capital value. They, however, in the further consideration as to what would be a reasonable allowance to make from income arising from a wasting asset, arrived at the conclusion that there should be a time limit to the recognition of wastage. Their recommendation was that no allowance should be made when the life of the wasting asset is estimated to be 35 years or longer (admittedly an arbitrary limit), and that consequently assets with a shorter life should receive an allowance dependent on the time by which their life falls short of 35 years, such allowance to be the sinking fund payment necesssary to amortise the capital cost of the asset over its agreed life less the sinking fund payment which would be necessary to amortise the capital cost if the life of the asset were 35 years.

517. Another recommendation made by the British Commission was that no allowance should be granted to incomes arising from wasting assets which consist of the proprietorship of natural resources in Great Britain.

518. The impossibility in many instances of accurately estimating the life of a wasting asset led the British Commission to suggest the necessity for making revised estimates of the life of an asset from time to time.

519. The modification of the abstract principle to which the British Commission were driven in an attempt to devise practical applications are shown in the three preceding paragraphs. We are impressed with the same difficulties, and have therefore sought a solution of the problem of making adequate allowance from taxable income in respect of wasting assets which, while in the main doing substantial justice, will avoid involving both the taxpayer and the Department in complexity and uncertainty.

520. Income-producing assets (other than live stock) may for the present purpose be divided into three classes, viz. :—

(1) Material assets constructed or manufactured, such as buildings and machinery.
(2) Material assets consisting of the natural resources of a country, such as land and the mineral deposits it contains or growing timber thereon.
(3) Immaterial assets, such as an interest in a lease, a franchise over roads, patent rights, &c.

521. With respect to assets included in Class 1, we are of opinion that suitable allowance for depreciation or wastage can be made under Section 18 (1) (*e*) of the Act. In paragraph 506 of this Report, dealing with that sub-section, we have expressed the opinion :—

(1) That the provision for allowance for repairs in Sub-section (*d*) of Section 18 of the Commonwealth Act is all that is reasonably necessary in respect of buildings and fences.

(2) That, in the case of dams, wells, and underground tanks, the position is fairly met by the allowance of the cost of labour employed in their maintenance.
(3) That there is no necessity for a specific allowance in respect of the diminution of value arising through obsolescence.

522. With respect to assets included in Class 2, we are of opinion that, if the attempt were made to provide in the Income Tax Act for an allowance in respect of the amortisation of the capital cost in all cases, three factors should present almost insuperable difficulties. These factors are :—

(1) The great uncertainty which exists in most instances as to the life of the asset. This uncertainty is much greater in the case of assets included in this class than in the case of those included in Class 1.
(2) The equal uncertainty which attaches to the residual value of the asset.
(3) The administrative difficulties which lie in the way of a periodical recomputation of the life of the asset.

523. A mining property may be taken as an example of a wasting asset which presents the difficulties indicated. It is often impossible with any degree of certainty to fix its mineral-producing life ; in consequence, any sinking fund provided for the amortisation of its original capital cost would have to be based upon an estimated expectancy of life mutually agreed upon by the Taxation Commissioner and the taxpayer. Experience might prove that the estimate arrived at was wide of the mark. Where such was the case, in order to do justice either to the revenue or to the taxpayer, revised estimates would have to be arrived at from time to time, and adjustments made in respect of tax paid or payable. Again, if at the end of the agreed-upon period of life it should be found that the asset was still of income-producing value, its residual value might be equal to or greater than its original cost, in which case the Taxation Department would be justly entitled to claim consideration for the over-allowance made in respect of wastage. On the other hand, if before the end of the agreed-upon period of life the asset were found to be exhausted, the taxpayer would be entitled to an adjustment by way of refund. In addition to these considerations, we have already alluded to the special provisions made in the Act under Section 17 in respect of the amortisation of the capital expended in necessary plant and in development of a mine.

524. Sir Josiah Stamp, in the Newmarch Lectures for 1919, recognises both the theoretical correctness of the claim for an allowance in respect of wasting assets and the difficulties which surround the application of the principle which underlies that claim. He states :—

> "The taxation of capital may be carried out in various ways. It may occur in an irregular way in the course of taxation of income, where income is so defined as not to exclude every capital element. If no exemptions exist in the income tax for a wasting asset, like a leasehold, we have taxation of capital mixed up with taxation of pure income, and this may generally be justified if the receipts are being used as though they were income. The practice as regards such allowances in the income tax is varied, and the evidence before the Royal Commission on the Income Tax has shown that the question is an extremely difficult one."

525. When dealing with the economic effects of taxation as distinguished from its incidence, Sir Josiah Stamp said :—

> "If you get an anomaly such as is said to attach to the non-allowance of wasting assets, it may be a severe burden at the beginning, but, provided the rate of tax does not greatly alter, the industry may, so to speak, disperse the burden in the course of time, and return nearly the ordinary rates of remuneration upon capital and enterprise. Remedying the anomaly late in the day may possibly be little less than a present to the existing generation."

526. Consideration of the practical difficulties which surround the attempt to give full effect to the principle of the elimination of every capital element from taxable income (the theoretical correctness of which is not challenged), and the fact that Sections 17, 18, and 20 of the Commonwealth Income Tax Assessment Act allow deductions from assessable income in respect of the wastage of the assets therein specified, have led us to the conclusion that no general extension of the Act in this connexion is necessary or desirable. We are, however, of the opinion that, in addition to the recommendation we have made in respect of purchased annuities, provision should be made in the Act for the allowance as a deduction from assessable income of the sinking fund payment necessary to amortise the capital cost of immaterial assets the interests in which subsist for a fixed term.

527. **Section 18 (1) (f)** reads :—

. . . . there shall be deducted—

" the sum actually expended by the taxpayer for food, and for rent of quarters, provided for an employee (other than a member of the taxpayer's own family under the age of fifteen years) who is employed exclusively in a business yielding an income to the taxpayer :

Provided that where a taxpayer provides quarters for such employees in any property in respect of which the taxpayer returns as income Five per centum on the capital value of the property, the proportion of such income found by the Commissioner to be applicable to the quarters so provided shall be deducted ;"

It was shown in evidence that many taxpayers are unable to state the actual sum expended by them for food supplied to employees. In such cases the Commissioner allows an amount of 20s. per week. It was contended that this allowance is insufficient. On this question of fact it seems clear that a taxpayer has the right of appeal to the Board of Appeal. **We do not consider any change in the sub-section is required.** The only State Statutes which contain any similar provision are those of Victoria and Queensland. The Victorian Act allows as a deduction the value of food provided for any employee. The Queensland Act has a similar provision, and, like the Commonwealth Act, includes an allowance in respect of quarters provided for any employee.

528. **Section 18 (1) (g)** reads :—

. . . . there shall be deducted—

" Payments not exceeding Fifty pounds in the aggregate, made during the year in which the income was derived by a taxpayer who is in receipt of salary, wages, allowances, stipends, or annuity to superannuation, sustentation, widows' or orphans' fund established in Australia or any society duly registered under any Friendly Societies Act of the Commonwealth or a State ;"

We see no reason for limiting the concessional deduction specified in this sub-section to "a taxpayer who is in receipt of salary, wages, allowances, stipend, or annuity." **We, therefore, recommend** the amendment of the sub-section so as to make the deduction apply generally.

529. The New South Wales Statute permits a deduction of any payments made under the Civil Service Act of 1884 or the Railway Servants' Superannuation Act of 1910, " or any similar payment," without limitation of amount. The Victorian Act contains a provision very similar to that of the Commonwealth. The amount is limited to **£50** in any year. The provision in the Queensland Act is almost identical with that of the Commonwealth, including a limitation to **£50**. In South Australia, Western Australia, and Tasmania there is no provision of the kind.

530. **Section 18 (1) (h)** reads—

. . . . there shall be deducted—

" (i) payments made or gifts purchased and forthwith presented during the continuance of the present war to any patriotic fund established in any part of the King's Dominions or in any country in alliance with Great Britain for any purpose connected with the present war, if the making of the payments or the purchase and presentation of the gifts is verified to the satisfaction of the Commissioner ;

" (ii) contributions made to the Department of Repatriation or to any public authority for the purpose of being handed over to the Department of Repatriation :

" Provided the value of the contribution, if in kind, shall be verified to the satisfaction of the Commissioner ; and

" (iii) gifts exceeding Five pounds each to public charitable institutions in Australia if the gifts are verified to the satisfaction of the Commissioner ; "

531. The war having ended, the operation of sub-clause (i) of this sub-section is exhausted. The evidence in relation to this sub-section was all in respect of sub-clause (iii)—gifts to public charitable institutions. The views of witnesses upon this provision varied greatly. Some advocated the abolition of the clause and some its amendment to include all charitable gifts whether above or below **£5**. A strong objection to a provision of this character is that it affords a concession to the taxpayer, varying in value according to his position upon the scale of graduated rates, but whatever that position may be, the effect of the sub-section is to make the general body of taxpayers contributors of a proportion of the individual's charitable gift. Assuming that an individual makes a gift of **£50,** then, if his rate of Income Tax is

1s. in the £1, the general body of taxpayers may be said to contribute **£2 10s.** of the **£50.** If, however, the donor has an income taxable at **8s.** in the £1, then the general body of taxpayers may be said to contribute **£20** of the amount of the gift. These extreme differences in effect of the provision as between one taxpayer and another, and the doubt we entertain that the concession has had any appreciable effect in stimulating private benevolence, **lead us to the conclusion that it is not in the general interest of the public that this provision be retained. We therefore suggest its omission from the Act.**

532. The State Acts of New South Wales, South Australia, Western Australia, and Tasmania contain no provisions similar to that of the above sub-section. The Victorian Act allows a deduction of any sum over **£20** contributed to certain public institutions within Victoria. The Queensland Act permits a deduction of—

(*a*) any cash donation not less than **£2** to any approved Queensland patriotic fund and

(*b*) money contributions to any approved charitable institution.

533. **Section 18 (1) (i)** reads—

. . . . there shall be deducted—

" five per centum of the total amount paid in the year in which the income is derived in respect of calls on the shares of a company carrying on operations in Australia :

" Provided that the total amount of calls paid in the year in which the income is derived shall be deducted in the case of calls on shares in a mining company or syndicate carrying on mining operations in Australia ; "

534. The provision in this sub-section which allows as a deduction from assessable income the total amount of calls paid on shares in a mining company or syndicate was evidently inserted as a means of affording through the Income Tax Act some direct encouragement to the mining industry. We do not interpret our terms of reference as directing us to inquire into the present position of that industry nor into the necessity for the continuance of such encouragement through the Income Tax Act, **and therefore make no recommendation with regard to this provision.**

535. The provision allowing a deduction of 5 per cent. of the total amount paid in any tax-year in respect of calls upon company shares generally is one the purpose of which is not so easily seen. Nor have we been able to gather any clear reasons for its inclusion from a perusal of the speeches made in Parliament when the provision was passed. Technically there is a distinction (though no essential difference from the point of view of the payor) between amounts paid as application and allotment moneys and amounts paid as calls. There was evidence that in some cases companies are now applying the term " Calls " to application and allotment moneys with a view to the shareholder obtaining the larger deduction. It does not appear that there is any necessity to stimulate company formation by a concessional deduction from Income Tax of this nature, and **we suggest that this provision might well receive careful consideration, with a view to its omission from the Act.**

536. The only State in which the Income Tax Statute contains any provision similar to that of the above sub-section is Victoria. The Victorian Act allows mining calls as a deduction if the mine is situated in Victoria. With regard to companies other than mining, there is a provision in the Victorian Act permitting the deduction of calls paid upon shares in certain reconstructed companies, which, in the opinion of the State Commissioner, are of no market value. This provision, which dates back to 1893, is a relic of the " boom " period, and applies only to certain companies specified in an Act called the *Reconstructed Companies Act* 1893. Operation of the provision is probably exhausted, or nearly so. The Victorian Act contains a further provision, allowing as a deduction any calls or contributions made by a taxpayer upon shares of a company which is in liquidation.

537. **Section 18 (1) (j)** (amounts paid to a fund to provide benefits, pensions, or retiring allowances to employees).—**No change is recommended in this sub-section.**

538. **Section 18 (1) (k)** (allowance for children).—Recommendation on this subject was made in the Commission's First Report, and the Income Tax Act has been amended in accordance with that recommendation.

539. **Section 18 (1) (l)** (commission for collecting income).—**No change is recommended.**

540. **Section 18 (1) (m)** (interest on mortgage of site of taxpayer's residence).—**No change is recommended.**

541. **Section 18 (1) (n)** reads—

. . . . there shall be deducted—

"the annual sum necessary to recoup the expenditure on improvements made under covenant with the lessor on land by a lessee who has no tenant rights in the improvements. The deduction under this paragraph shall be ascertained by dividing the amount expended on the improvements by the lessee by the number of years in the unexpired period of the lease at the date the improvements were effected."

542. Several witnesses suggested that this sub-section should be amended to allow of the deduction of sums expended by a lessee on improvements made **not under covenant.** The position of such expenditure is, in our opinion, quite different from that upon improvements made under covenant. It seems reasonable to treat this expenditure as capital expenditure and to assume that it would be incurred by the lessee only if he saw his way to recoup himself before the expiry of his lease. It would be inadvisable, if the deduction of such expenditure were contemplated, to allow the whole of it to be deducted from one year's income, and there might be difficulties in administration if the deduction were made in annual proportions, especially if a change of ownership occurred during the currency of the lease. To allow a deduction to a lessee in respect of the cost of an improvement, which can be of value to him only during currency of the lease, while no burden is for taxation purposes cast upon the lessor to whom the residual value of the improvement enures as a benefit on expiry of the lease, also provides opportunity for collusion injurious to the revenue. **We do not feel justified in recommending the amendment of the sub-section, as suggested by witnesses.**

543. **Deduction of Losses where more than one Business is carried on.**—Section 21 reads—

"(1) Where a taxpayer either alone or with other persons carries on or is interested as a partner in more than one business, the income (if any) from which would be taxable, and makes a profit in one or more of such businesses, and a loss in another or others, the taxpayer shall be entitled to deduct the sum of the losses from the sum of the profits.

(2) Where a taxpayer, having an income derived from property, carries on one or more businesses, either alone or otherwise, and makes a net loss thereon, the loss shall be deducted from his income derived from property in calculating his taxable income.

(3) Notwithstanding anything contained in Section 13 of this Act, sub-section (2) of this Section shall apply to any taxpayer who is on active service."

544. We are of opinion that this Section should be amended so as to make it clear that a loss made on any one or more businesses carried on by a taxpayer either alone or otherwise shall be deducted from any other income he may have, and that, when that income consists partly of income from personal exertion and partly of income from property, the deduction shall be made in the first place from the income from personal exertion, and, when the amount to be deducted exceeds that income, the excess shall be deducted from the income from property. **We recommend amendment of the Section to make that clear beyond doubt.**

545. **Interest on Tax Overpaid.**—The lodgment of an objection to an assessment or the fact that an appeal against the assessment is pending does not relieve the taxpayer from payment of tax upon the due date. There are many cases where a taxpayer lodges an objection against the assessment, but for various reasons, though the matter does not lead to an appeal to the Courts, no final decision is reached for some time. In this and all other cases where tax is paid, and it is afterwards found that an over-assessment has been made, it was suggested by a number of witnesses that the Department should allow interest from the date of payment until the date of refund. The fact that the Act provides a "penal tax" of 10 per cent. of the tax unpaid for failure to pay within the prescribed time was adduced as an argument in favour of the claim. It is to be remembered, however, in this connexion, that Section 43, which imposes this penalty for failure to pay tax "before the expiration of the time specified in Section 41 *or such further time as may be allowed by the Commissioner* under Section 42", also gives the Commissioner discretionary power in any particular case to remit the whole or any part of the additional tax imposed by way of penalty, a discretion which, the Commissioner states, is freely exercised. Obviously a partial remedy for the grievance complained of would be found in the prompter issue of decisions by the Department. As a matter of the apparent equity of the case, it is difficult to reject the claim for interest on tax overpaid. A recommendation on the subject will be found in paragraph 546 of this Report, dealing with Section 33 of the Act.

545(*a*). **Amended Assessments—Time Limit for Issue.**—Section 33 reads—

"(1) The Commissioner may at any time make all such alterations in or additions to any assessment as he thinks necessary in order to insure its completeness and accuracy, notwithstanding that Income Tax may have been paid in respect of income included in the assessment:

Provided that every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the taxpayer affected, and, unless made with his consent, shall be subject to objection.

(2) When any alteration in an assessment has the effect of reducing the taxpayer's liability, the Commissioner may refund the taxpayer any tax overpaid:

Provided that, where the alteration in the assessment is due to an application by the taxpayer, no refund shall be given, if the application has not been made within three years after the payment of the tax."

546. Many witnesses complained of the absence of any limitation of time upon the Department in issuing amended assessments under this Section, and urged that the Department should be limited to the same extent as the taxpayer is limited by the Section in respect of the time within which applications for refunds must be made. Two positions may arise in relation to the issue of amended assessments some time after the issue of the original assessment. Firstly, where the issue of the amended assessment is due to the failure of the taxpayer to place the Department in possession of all the material facts upon which to base a complete assessment. In this case **we do not recommend** any limitation of time upon the Departmental action. Secondly, where the Department has from the beginning been placed in possession of all the information necessary for the compilation of a complete and accurate assessment, but has issued an imperfect assessment. **In this case we recommend** that a limit of three years be imposed upon the Department as the period within which an amended assessment may be issued. If such an amended assessment discloses an overcharge by the Department in the original assessment, in our opinion, the taxpayer should receive interest at a prescribed rate. Similarly if, in the circumstances of the first case, an under-payment by the taxpayer has occurred, he should be required to pay interest at the prescribed rate. **We are further of opinion** that the provision limiting the taxpayer's right to refund of tax upon alteration in his assessment due to an application made by him within three years after the payment of the tax should not be held to govern those cases in which such application is based upon a departmental ruling not previously available to the taxpayer. For a recommendation on this subject see paragraph 590 of this Report.

547. **Period for Payment of Tax.**—Section 41 (1) reads:—

"Income Tax shall be due and payable thirty days after the service by post of a Notice of Assessment."

It was pointed out to us that the period of 30 days specified in this section between the service by post of a Notice of Assessment and the payment of the tax is in many instances inadequate, owing to the irregularity and infrequency of the delivery of mails in distant parts of the Commonwealth, and that taxpayers are frequently liable to penalty for late payment of tax through no fault of their own. In our opinion, such cases should be met by allowing a longer period for payment than 30 days.

548. **We recommend** that the sub-section should be amended to read:—

"Income Tax shall be due and payable on a date to be named on the notice of Assessment, not being less than thirty days after the service by post of such Notice."

549. **Compliance with Income Tax Law before issue of Passports.**—Section 41 (3) reads:—

"Whenever the Commissioner has reason to believe that any taxpayer establishing or carrying on business in Australia intends to carry on such business for a short time only, he may at any time and from time to time require the taxpayer to give security by way of bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of and payment of income tax on the income derived from the business."

We had official evidence that the Department has had effective assistance from the Commonwealth Passport Department in tracing persons who were leaving Australia, and a proposal was submitted that the existing law should be amended by requiring the production of a certificate from the Taxation Department that the taxation laws have been complied with, before a passport is issued. While not favouring this suggestion in its entirety, **we are of opinion that it would not be unreasonable to require any person not being a resident of the Commonwealth,** on making application for a passport authorizing his departure from the Commonwealth or on making application for his passport to be *visé* or indorsed for the journey to any place beyond the Commonwealth under the Passports Act, to produce a certificate from the Taxation Department to the effect that no objection is offered by the Department to the issue of the passport or to its

visa or indorsement. Such a practice would not necessitate in every case the payment of the tax before the issue of such certificate, but, where a taxable income is disclosed, would permit of the Department satisfying itself by acceptance of security or otherwise that the tax liability will be duly discharged.

550. **Payment of Tax in Instalments.**—Section 42 reads :—

> "The Commissioner may in such cases as he thinks fit—
>
> (*a*) extend the time for payment, as he considers the circumstances warrant, or
>
> (*b*) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant."

Various suggestions were made in the course of evidence as to payment of Income Tax in instalments. Some witnesses favoured quarterly, others half-yearly payments. The majority were of opinion that interest at a moderate rate should be charged to cover the added cost of collection. The advocates of the change considered that such a provision, whether made of general application or applicable at the option of the taxpayer, would greatly reduce the number of applications for special extension of time for payment of tax under Section 42. In dealing with the representations made to us on the subject, we have taken into consideration, in addition to the added cost of administration, the fact that few of the assessments under the Income Tax Act are made payable in the first half of the financial year. The change of system, if made general, would mean that at least half the total revenue from Income Tax would not be collected till after the close of the financial year. This would, in the initial year at least, occasion dislocation in the public accounts. It does not appear practicable or desirable to require returns by taxpayers to be sent in earlier than at present, nor to demand payment of the tax in the first half of the financial year. In view of these considerations, and in the absence of any generally expressed demand for alteration in the present method, also for the reason that in our opinion the provisions of Section 42 are adequate to meet individual cases of difficulty or hardship, **we are not prepared to recommend the change suggested by witnesses.**

551. **Late Payment of Tax—Penalty.**—Section 43 reads—

> "If the Income Tax or additional Income Tax payable on an amended assessment is not paid before the expiration of the time specified in Section 41 of this Act, or such further time as may be allowed by the Commissioner under Section 42 of this Act, additional tax amounting to 10 per cent. of the tax unpaid shall be payable in addition by way of penalty :
>
> "Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed by way of penalty or any part thereof."

552. A large number of witnesses protested strongly against what they considered the oppressive severity of the above Section with regard to the penalty imposed for any late transmission of Income Tax, and it was very generally suggested that any percentage penalty should be at a rate per annum of the tax unpaid, instead of an absolute 10 per cent. of the whole tax, as at present.

553. We understand that in practice the Commissioner allows a reduction of the prescribed 10 per cent., according to the lapse of time after the due date at which the tax is actually paid. There is, however, no scale of which the public is aware according to which the matter is adjusted.

554. In our opinion, a rate per cent. per annum should be prescribed in lieu of the present absolute 10 per cent., and **we recommend** that the rate be 10 per cent. **per annum.** In making this recommendation, we do not recommend any limitation upon the discretion now given to the Commissioner to remit the penalty or any part thereof.

555. **Penalty for Failure or Neglect to furnish an Income Tax Return.**—Section 58 of the Commonwealth Income Tax Assessment Act constitutes (*inter alia*) the failure or neglect to duly furnish a return an offence, the penalty for which is fixed at not less than Two pounds nor more than One hundred pounds.

556. Complaints were made to us as to the undue severity involved in many cases by the infliction of the minimum penalty. Amongst representations received by us on the subject was one from the Chairman of the Metropolitan Bench of Stipendiary Magistrates in Sydney, who addressed us in the following terms :—

> "A large number of cases in New South Wales come before the Metropolitan Magistrates in Sydney, in which defendants are charged with neglecting to furnish Income Tax returns. In many of these cases the actual tax for which they are liable is very small, in a number of cases under One pound, and in a number of others under Two pounds. Many of the defendants are working girls, and poor people, quite unaccustomed to filling up Income Tax returns. Persons engaged in clerical or professional work have no idea how hard it is for persons in other walks of life to realize or comply with the requirements of the Income Tax Assessments Acts, or how difficult it is for them to fill in returns.
>
> "Two pounds, with costs added, is in itself an important matter to people with small incomes, or with large responsibilities, and the infliction of this penalty is in some cases positively cruel. To deprive magistrates of any discretion in the infliction of a minimum penalty is to deprive them of power to make any allowance for accident, incapacity, illness, or poverty in respect to offenders, all of which reasons are frequently justly offered as an excuse for neglect to comply with the law.
>
> "I think the record of penalties in the Metropolitan District of Sydney indicates that the Metropolitan Magistrates inflict most substantial fines on persons who are careless or wilful in neglecting to make returns, more particularly in respect to educated persons whose incomes are substantial, and for this very reason to force the imposition of a fairly large fine in the case of poor and ignorant persons as a minimum penalty is not only wrong in principle, but tends to create a just discontent which, if possible, should be avoided. The State Acts allow Magistrates a discretion in fixing penalties, and the contrast between the State and Federal procedure is not understood by the illiterate public, and adds to the prevailing sense of injustice.
>
> "I strongly recommend that the infliction of penalties should be left to the discretion of the Magistrates. If necessary, jurisdiction in respect to offences of this nature might be confined to Stipendiary, Police, and Special Magistrates, which would insure a procedure based on experience, and would prevent the imposition of nominal fines in more serious offences."

557. **We recommend** that the Act be amended so as to provide that the minimum penalty for the offence of failing or neglecting to furnish a return be either a nominal amount, say 2s. 6d., or be left to the discretion of the Magistrate.

558. **Taxation of Wages at the Source.**—Many witnesses put forward the suggestion that the system of taxation at the source should be extended to wages, deduction being made by the employer from each "pay." The principal reason adduced for the suggestion was that, in the opinion of the witnesses, a large number of wage-earners, particularly those whose habits are nomadic, escape taxation, partly by failure to render returns, and partly by assuming different names in different localities. It was stated that this applies specially to shearers, sugar-cane cutters and, to a less extent, wharf-labourers. Another reason put forward in support of the proposal was the opinion that all persons earning should contribute something towards the cost of the State, and that the most convenient method would be by collecting the tax in small sums out of each payment of wages, and making it compulsory for employers to deduct the tax when making payments, the employee to receive stamps to the value of the amount deducted, such stamps to be accepted as evidence of payments, and to be produced later on for the purpose of claiming any refunds which may be due when the total income for the financial year has been ascertained. Further, it was urged that the deduction from wages is the easiest possible method for the workmen, as the small amounts deducted from time to time would hardly be felt, while a demand for the aggregate tax after the close of a financial year is often embarrassing.

559. A similar method of taxing workers was urged before the British Commission on the Income Tax 1920, but that Commission found that opinion amongst the wage-earners themselves was strongly against the deduction of tax from wages by employers. The Commission felt that, so long as such an opinion exists, the adoption of any such method would be impracticable ; but if a change in view occurred, the Commission was of opinion that the method of deduction of tax from wages would be desirable. At present the British Income Tax Act contains special provisions for the assessment of weekly wage-earners and for the collection of tax. The system is shortly stated by the British Commission as follows :—

> "The wage-earner completes a simple form of return at the end of the first quarter of the year, on which he claims any abatement or family allowances or expenses to which he may be entitled ; and the employer at the end of each quarter makes a return to the Inspector of Taxes of the actual payments made by him to each employee during that quarter. The assessments are made quarterly by the Inspector, subject to a right of appeal to the General Commissioners ; and at the end of the year, when the total liability of the year can be correctly ascertained, there is, if necessary, an adjustment of the four quarterly assessments, followed by repayment where due, whether or not the wage-earner makes a formal claim."

560. Among the witnesses heard by us, some were of opinion that a flat rate should be imposed upon wage-earners to be deducted by the employer without any adjustment when the total income of the year has been ascertained.

561. Other witnesses, however, recognized the justice of treating wage-earners in the same way as other taxpayers—that is, making them finally liable for tax at the rate appropriate to their net income for the year. This, of course, would mean that at the end of the year a wage-earner from whose wages tax had been deducted at a flat rate would have to make a return or statement showing his total income from all sources, and forward the stamps or other evidence of the amount of payments deducted by the employer, with a view to establishing a claim to any refund or rebate to which he might be entitled.

562. We have no hesitation in saying that the proposal to tax wages at the source cannot fairly be considered except in conjunction with a system of adjustments which will have the effect of finally imposing tax only to the extent justified by the total taxable income for the year.

563. Not much evidence was received with regard to the attitude of employers towards such a proposal, but generally the impression conveyed was that employers would be unfavorable to the assumption of such a responsibility as the proposal involves.

564. The extent to which tax is lost owing to the absence of any such scheme is a matter upon which no reliable estimate can be given. The Federal Commissioner of Taxation, in his Seventh Annual Report, estimates the annual loss of tax by evasion, including the failure to make returns, at not less than £300,000. Even if this were a fairly accurate estimate, there is no indication of the proportion due to failure on the part of wage-earners to recognise their responsibility towards the Revenue.

565. As to the revenue benefit likely to be derived from introduction of a system of taxing wages at the source, the Federal Commissioner in his Seventh Annual Report points out that expensive machinery for adjustment would have to be set up, and sums up his comment on the proposal in these words: "I incline to the view that it would not pay unless the present minimum rates of Income Tax were considerably increased."

566. While so much is doubtful as to the extent of evasion practised by wage-earners; while the proposal to compel employers to deduct tax from wages is unfavorably regarded by both employers and employees, and while the net yield is so uncertain, **we do not feel justified in recommending the taxation of wages by the method suggested.**

[For reasons stated in an addendum, see page 175, Commissioner Jolly does not subscribe to this section of the Report. He also dissents, see page

From the recommendation contained in paragraph 475 of this section of the Report, Commissioner Mills expresses dissent. See page 177.

From the recommendation contained in paragraph 471 of this section of the Report, Commissioner Duffy expresses dissent. See Reservation *re* Casual Profits, page 143 of the Second Report.]

SECTION XVII.

ADMINISTRATION.

567. **Decentralization.**—The administration of Income Tax, both by the Commonwealth and by State authorities, is highly centralized, the business being conducted wholly from offices in the capital cities. So far as the Commonwealth is concerned, many matters, wherever arising, must be referred to Melbourne.

568. This is in marked contrast with the British method, which is decentralized to a very great extent. The early conception of the British Act was indeed a local administration, with hardly anything more than a general supervision, not amounting to positive control, exercised by a central body. The extent to which administration is localized in Great Britain may be realized from the statement of fact that there are 725 divisions, in each of which an unpaid body known as the General Commissioners has considerable powers, partly as an assessing body, but chiefly as an appellate body. There is also a wide distribution of officers directly responsible to the Board of Inland Revenue, who are called Inspectors of Taxes. The districts in which these officers exercise their authority are not always co-terminous with those of the General Commissioners, and, in practice, owing to the continually increasing complexity of Income Tax law, the functions of the General Commissioners have come to be largely exercised by the Inspectors. The extent to which the purely appellate functions of the General Commissioners are passing into the hands of the Inspectors, subject to formal sanction by the Commissioners, is shown by figures quoted in the Report of the British Commission 1920, which shows that of 67,796 assessments which were the subject of adjustment, only 1,263 were actually heard as appeals by the Commissioners, the remaining 66,533 cases having been settled between the taxpayers and the Inspectors of Taxes.

569. The desirability of some decentralization in the Australian administration was urged by a number of witnesses. It was suggested, for example, that officers of the Taxation Department should, at times to be advertised in the local press, visit country towns, where they would be available for consultation for the purpose of rendering assistance to taxpayers. Both the Commonwealth Commissioner and the Commissioners in the various States have expressed themselves as favorable to this proposal. The Commonwealth Commissioner has personally visited some centres and made himself accessible to taxpayers, with, we understand, very satisfactory results. Other officers of the Commonwealth Department visit centres outside the metropolis, but their work has generally been confined to the conduct of investigations. The State Commissioner of Queensland informed us that he has on occasions visited the northern towns

of his State, and has been able in the course of a few days' visit to bring to a conclusion matters which perhaps would have been almost impossible of settlement by correspondence, and in any case could not have been determined in that manner without great delay.

570. It cannot be said that the present administrators, Commonwealth or State, favoured in evidence the establishment of permanent Branch Offices in country centres, but this is a development which perhaps might come later, if more can be done in the way of temporary visits to overcome the difficulties which many taxpayers feel owing to their remoteness from the administrative centre. In respect of the Commonwealth, the Commissioner states that his difficulty with regard to this, and many other matters, has been and still is inadequacy of staff. For the purpose of visiting country centres, it is clear that only well-trained officers of reasonably high status and invested with real authority can be employed if the taxpayer is to be most effectively assisted and the administration protected.

571. In our opinion, it would be very much in the interests of the taxpayers if the Commissioners, both Commonwealth and State, could arrange for periodical and duly advertised visits by responsible officers to country centres for the purpose of assisting taxpayers with information and, as far as possible, of settling disputes.

572. Many witnesses urged that efforts should be made to minimize the difficulties which occur owing to the number of cases which are referred by Federal Deputy Commissioners of Taxation to the Central Administration. It was not merely the fact of such reference which was complained of, but it was stated that long delays frequently occur in obtaining decisions upon the matters so referred. We recognise the necessity for maintaining uniformity of practice in all States, and that this involves reference to the Central Authority on all questions having more than an individual or local significance. Witnesses in many cases expressed the opinion that matters are referred which should be capable of final determination by the Deputy Commissioners. We have no data by which such an opinion can be tested, but, to reduce the difficulties complained of to the lowest limits—

573. **We recommend**—

(1) That the widest possible powers be delegated by the Commonwealth Commissioner to his Deputies.

(2) That the Deputy Commissioners be encouraged to avoid reference to the Central Administration except upon questions of principle which have not previously been the subject of a ruling by the Commissioner.

(3) That every effort be made to reduce the delays which in a number of cases occur in the Central Office in determining questions submitted by Deputy Commissioners.

574. **Staff and Staff Accommodation.**—The Commonwealth Commissioner of Taxation has represented to us that he has found many difficulties in retaining a competent staff, largely owing to the resignations of a number of senior officers who found it to their interest to enter into business as Accountants and Taxation Experts.

575. The Commissioner's view is that his control, from the point of view of classification and rates of salary, should be complete, instead of, as at present, being in the hands of the Public Service Commissioner. In our opinion, the terms of our reference do not justify such an intensive and extensive inquiry as would be necessary before any sound judgment could be reached upon such a question, which obviously may affect not only one Department of the Government but all Departments. We are quite clear that we have no mandate to inquire generally into the control of the Commonwealth Public Service, and we are equally clear that any recommendations which might be made from the point of view of the necessities of a particular Department would necessarily have far-reaching effects and repercussions upon other Departments.

576. Another matter brought before us by the Commonwealth Commissioner was that of the accommodation for his staff. At the Commissioner's request, we inspected the offices occupied by the Deputy Federal Commissioner and his staff, both in Melbourne and Sydney, and could form no other opinion that that in each case the staff was working under extremely bad conditions, due chiefly to overcrowding. In our opinion, such conditions militate against efficiency.

577. It should hardly need emphasizing that officers engaged in responsible and often difficult duties should work under conditions conducive to health and comfort. The conditions, as we saw them in Melbourne and Sydney, fell so far short of a reasonable standard in both respects that the efficiency of the work must be seriously impaired. There was, also in our opinion, an evident lack of suitable accommodation for confidential interviews between taxpayers and officers of the Department.

578. We are aware that the question of office accommodation is receiving attention at the hands of the Government, and it is obviously not a subject upon which any detailed recommendation should be made by us; but we wish to place upon record our opinion that the conditions now existing and affecting an important percentage of the taxation staff of the Commonwealth should be materially improved.

579. **Office Orders.**—A passing reference was made in paragraph 146 (First Report) to the early issue (as announced in the Federal Taxation Commissioner's evidence) of the departmental rulings and interpretations affecting taxpayers as being likely to reduce the volume of disputes between taxpayers and the Department.

580. In the administration of so technical a measure as the Commonwealth Income Tax Assessment Act, questions of interpretation necessarily arise from time to time. The Commissioner's rulings upon matters of doubt and difficulty determine the Department's practice, and are expressed and embodied in what are known as Office Orders. These Orders are circulated amongst the Branch Offices of the Department in the various States for the guidance of the Deputy Commissioners, in order to secure uniformity of practice throughout the Commonwealth. The cancellation of an Office Order or the substitution of a new ruling may be the result of an altered opinion formed on reconsideration by the Commissioner in the light of fuller information, or, as is sometimes the case, may be due to the decision of an appellate court affecting the question at issue. It may be assumed that the Commissioner is in many instances guided in the decisions expressed in these Orders by the advice of the Crown Law Officers.

581. The greatest possible publicity should be given to these Office Orders, and copies should be made promptly accessible to all taxpayers, so that none need be prejudiced through lack of information. In our opinion, it should be the invariable practice of the Department to apply interpretations to all taxpayers affected thereby, so that the Department may be free from even the suspicion that those who are better informed as to the Department's decisions receive more liberal treatment than those who are ignorant of them. Another essential in our opinion is that all decisions of the Commissioner, whether or not due to the judgment or finding of any competent court or Board of Appeal, should be made to apply to all assessments affected thereby in the current year of assessment, even though such application may involve the issue of a number of amended assessments.

582. It is a matter of regret that the voluminous Office Orders relating to the Commonwealth Income Tax Assessment Act, over 1,000 of which are in existence, have not yet been codified and made available to taxpayers.

583. It has been complained before us that, owing to the non-publication of the Office Orders and the consequent ignorance of taxpayers of Departmental decisions, amounts have been paid in excess of those properly payable. It is said that this is true, not only in respect of Office Orders now current, but also in respect of some Orders which, after governing the practice of the Department for a time, have been cancelled.

584. In a few instances publicity has been given to Departmental interpretations and practice—either through the public press or by publication in the Commissioner's Annual Reports to Parliament—sufficiently to establish their value to taxpayers in the preparation of Income Tax returns and in understanding of the law, and to demonstrate the importance of such publicity from the point of view of equitable administration of the Act. If this be true in respect of the relatively few Office Orders to which publicity has been given, it is to be reasonably assumed that similar advantages would attach to the publication and circulation of the large number of decisions yet unpublished. Those decisions are probably unknown outside the Department except to the taxpayers upon whose assessments the decisions were based.

585. Early in the course of our inquiry, we asked the Federal Commissioner of Taxation to produce for our information and guidance the current Office Orders, and the request has been repeated more than once. These Orders were promised as soon as they could be made available, but, with the exception of some 30 Orders of comparatively recent date, we are still without the desired information.

586. We fully appreciate the difficulties which the Commissioner has experienced in endeavouring to present the information to us in the form in which he felt free to do so, and in which he considered it would be most helpful to us—that is with the elision of personal references to individual taxpayers which the Commissioner stated occur in a large number of the Orders as originally issued for Officers' use, and with the omission of all obsolete Orders. The delay in the compilation and issue of the volume of Orders is attributable by the Commissioner to the loss of competent and responsible officers through death and resignation, and the necessity for assigning other duties to those members of the staff who were engaged in the revision and compilation of the Orders. We regret that the Commissioner has not found it possible to make the Orders available, as throughout our inquiry, and particularly in our critical examination and detailed study of the several sections of the Act, our investigation in many instances would have been rendered both easier and more fruitful had we been in possession of precise information as to Departmental practice of the nature and in the form supplied in the Office Orders.

587. The prompt publication of a handbook on the War-time Profits Tax—to whatever criticism it may be open in matters of detail—was a praiseworthy effort on the part of the administration to make that specially complex measure intelligible to the general body of taxpayers.

588. We have also noted with satisfaction the recent publication by the Department of a handbook explanatory of recent amendments of the law which were recommended in our First Report. These amendments include the introduction of the averaging system to be applied to the Income Tax Assessments of primary producers.

589. Both these publications may be regarded as evidence of a desire on the part of the Department to afford information and assistance to taxpayers. But, in our opinion, more needs to be done.

590. **We therefore recommend**—

(1) That the existing body of Office Orders affecting the general practice of the Department be published at the earliest possible moment, and be offered for sale to the public at a moderate cost.

(2) That all such Office Orders subsequently issued be made accessible to taxpayers as soon as issued.

(3) That, with a view to securing wide publicity, the daily press in each capital city be furnished with copies of all such Office Orders as soon as issued.

(4) That all such Office Orders be purchasable at each Commonwealth Taxation Office at a moderate cost.

(5) That facilities be provided free of charge at each Commonwealth Taxation Office for the perusal by taxpayers of all such Office Orders as are operative.

(6) That all such Office Orders be made to apply to all assessments affected thereby relating to the current year of assessment.

(7) That, when the promised volume of Office Orders is published, a public notification be made that within twelve months from the date of publication (or such further period as the Commissioner may allow) any taxpayer may apply for an alteration of his assessment for any previous year, where the application is based upon an Office Order the contents of which were not available to the taxpayer at the time of the original assessment.

(8) That, to meet cases where a claim for refund of tax would be apparently sustainable under any Office Order which had been cancelled before the publication of the volume of Orders, for twelve months after the publication of that volume such cancelled Orders shall be available for perusal by taxpayers at the Taxation Office in each capital city, and that during that period taxpayers shall have the same right of application for alteration of their assessment for any previous year arising out of the provisions of any such Order as they would have in respect of published (current) Orders.

SECTION XVIII.

TAXATION OF INTEREST ON STATE GOVERNMENT SECURITIES AND THE INCOME OF STATE ORGANIZATIONS.

591. The Federal Commissioner of Taxation, in his Seventh Annual Report (page 60), makes the following statement under the above heading :—

> "The High Court judgment in the case of The Amalgamated Society of Engineers *v.* The Adelaide Steam-ship Co. Ltd. has raised the question of the power of the Commonwealth to levy Income Tax on—
>
> (*a*) interest paid by State Governments or State Government instrumentalities upon borrowed money, and
>
> (*b*) the income of a State instrumentality, *e.g.*, a State Savings Bank.
>
> Hitherto, Income Tax has not been levied in either case. The judgment is being studied for the purpose of determining whether any change of practice is now necessary."

592. The Commissioner, in evidence before us, said that, under the judgment of the High Court in the case of D'Emden *v.* Pedder—

> "It was held that the States could not tax interest on Commonwealth loans, and the implication was drawn from that that the Commonwealth could not tax interest on State loans. The High Court has made it clear now, I think [*i.e.*, in the Engineers case above cited], that the Commonwealth can tax those loans. At any rate, I am so advised that that power exists."

593. It may be pointed out that the power of the Commonwealth to prohibit the imposition by a State of Income Tax upon interest derived from a Commonwealth security is definitely expressed in Section 52B of the *Commonwealth Inscribed Stock Act* 1911-18, which reads:—

> "The interest derived from Stock or Treasury Bonds shall not be liable to Income Tax under any law of the Commonwealth or a State unless the interest is declared to be so liable by the prospectus relating to the loan on which the interest is payable."

Apparently no reciprocal power on the part of a State exists to prohibit the Commonwealth from imposing Income Tax upon interest derived from State securities.

594. In 1920 the Queensland Parliament enacted a provision by way of amendment of the Income Tax Act, Section 7 (12), under which the interest upon an issue of Commonwealth Bonds which under Section 52B above quoted was intended to be free of State Income Tax was made indirectly taxable by the State. This effect followed from the requirement of the Amending Act that the amount of interest from such Commonwealth securities should be included in assessable income for the purpose of determining the *rate* of State Income Tax, although tax was not levied upon that part of the income consisting of the interest in question. Action was instituted in the High Court by the Commonwealth against the State of Queensland, claiming a declaration that the State provision in question was invalid, so far as it related to income arising from debentures, &c., issued by the Commonwealth Government. The High Court held that the provisions of Section 52B above quoted are within the powers of the Commonwealth Parliament and that the Queensland Amending Act was in contravention of that section, and therefore invalid. (See the Commonwealth *v.* State of Queensland, 29 C.L.R., page 1.)

595. If, then, it be held that interest on State Government securities or on securities issued by a State instrumentality would be taxable under the Commonwealth Income Tax Assessment Act, unless specially exempted, it is important to consider the more obvious effects which would follow the exercise by the Commonwealth of the power to tax such interest.

596. According to the latest available information, State Government debts at 30th June, 1921, amounted to £458,408,900, but, in order to arrive at the amount the interest upon which would constitute the aggregate income which would be brought into the taxable field for the first time if the Commonwealth, possessing the power to tax interest on State securities, decided to exercise that power, there would have to be deducted from this sum, first, an amount of £67,393,886 loaned to the States by the Commonwealth. There would also have to be deducted an amount represented by the face value of the total Government securities held by institutions, such as Friendly Societies, Provident Funds, Religious Bodies, Charitable Institutions, whose incomes are now exempt by Statute from Commonwealth Income Taxation, and State Savings Banks, whose incomes are now exempt by executive direction. In the aggregate the amount to be so deducted must be very considerable, which, however, it is impossible from any available data to estimate without allowing for a considerable margin of error.

597. The amount of State securities held by the various State Savings Banks at 30th June, 1921, aggregated £66,871,719. As a rough estimate, we assume the sum invested in Government securities by other institutions (such as are indicated above), whose incomes are at present exempt from taxation, together with the amount held by persons whose individual incomes are not taxable, to be an amount of £24,143,295, which is equivalent to rather less than 7½ per cent. of the securities, after making the specific deductions referred to. On this basis it may be assumed that approximately £300,000,000 of State securities are held by taxpayers who at present are not called upon to include in their assessable income the interest derived from these securities, the average rate upon which at 30th June, 1921, was 4⅛ per cent.

598. It is impossible to estimate other than roughly what the revenue effect would be if this interest were brought within the area of Commonwealth Income Taxation. The uncertainty is due chiefly to the absence of this class of income from so many returns.

599. The rates of tax payable if this class of income became taxable would necessarily vary considerably in the case of individual taxpayers other than companies (to whom a flat rate of 2s. 8d. in the £ now applies), but in our opinion the average rate of tax applicable may be assumed to be about 1s. 6d. in the £. At this rate, on the assumptions previously made, **the revenue gain would be £937,500*,** as indicated by the following figures:—

Total State Debts at 30th June, 1921		£458,408,900
Deduct amount (*a*) loaned by the Commonwealth to the States	£67,393,886	
(*b*) held by State Savings Banks..	66,871,719	
		134,265,605
		324,143,295
Deduct estimated amount held by institutions (other than Savings Banks) whose incomes are exempt from taxation, and by persons whose individual incomes are not taxable, say		24,143,295
		£300,000,000

Interest upon £300,000,000, at 4⅛ per cent., equals £12,500,000.
Income Tax upon £12,500,000, at 1s. 6d. in the £1, equals £937,500.

600. But effects other than those relating to Commonwealth *revenue* would unquestionably arise if interest on State securities were brought within the ambit of Commonwealth income taxation.

601. The immunity from Commonwealth income taxation hitherto enjoyed by holders of State Government securities in respect of the interest thereon has necessarily increased the burden upon taxpayers who do not hold such securities. The change, therefore, would have as one result the lightening of that burden and its transfer in part at least to the owners of State Government securities.

602. From the point of view of a State, an unfavorable effect would ensue, inasmuch as the market value of its current securities, and, in flotation of future loans, the prices tendered or amounts offered, would be affected by the imposition of the taxation. The same effect would no doubt follow upon the introduction of any new income taxation affecting interest upon securities issued at a time when no Income Tax was leviable nor in immediate contemplation. There is also the consideration that in some States loans have been issued with the undertaking that the interest shall be free both of Commonwealth and State taxation. So far as Commonwealth taxation is concerned, this, in our opinion, need not be regarded as a challenge to any Commonwealth power, but as the assumption by those States of an obligation to indemnify the holders of their stock against any Commonwealth tax that might be imposed. It may be (as to this we have no information) that any such assurances to the investing public have been given as the result of arrangements between the Commonwealth and the States.

603. If, further, it be held that the income of State organizations—for example, State Savings Banks—would be taxable under the Commonwealth Income Tax Assessment Act, unless specially exempted, the question necessarily arises as to whether a distinction should be made between interest on State securities, which reaches the hands of individuals or of companies, and the profits of, say, a State Savings Bank, which do not enure to the benefit of any individual. This distinction is apparently recognised in some of the exemptions enumerated in Section 11 of the Commonwealth Income Tax Assessment Act.

CONCLUSIONS.

604. **Interest upon State Securities.**—We are not aware of any sound principle of taxation which would be infringed by the taxation (by the Commonwealth Parliament) of interest upon loans issued by a State or a State instrumentality in the hands of debenture-holders; but the question of the exercise of Commonwealth power of taxation upon such interest is so involved with the relations of the Commonwealth and the States (as the authorities between which the whole legislative power of the people of Australia is distributed) that **we do not feel justified in making a positive recommendation as to whether that power should or should not be exercised.**

605. **Income of State Instrumentalities.**—As to the incomes of State organizations, we may recall that (in para. 450) we have recommended the retention of the existing exemption from taxation of the incomes of municipal corporations and other public authorities. **That recommendation applies with perhaps an added emphasis to the incomes of organizations which are more directly those of the State.**

* NOTE.—This does not include revenue which might result from the taxation of interest upon loans issued by State Savings Banks.

In concluding this, our Third Report,

We have the honour to be,

Your Excellency's most obedient servants,

W. WARREN KERR, Chairman.
JOHN JOLLY.*
J. G. FARLEIGH.
W. T. MISSINGHAM.
JOHN THOMSON.
S. MILLS.
M. B. DUFFY.

* (Signature subject to Addendum appended).

E. JELLEY, Secretary.

Melbourne, 21st July, 1922.

ADDENDUM BY COMMISSIONER JOLLY.

I am not able to either indorse or challenge many matters dealt with in Section XVI. of this Report, and my signature is therefore attached subject to the explanation which follows :—

The primary duty of this Commission " to inquire into and report upon the incidence of Commonwealth taxation," cannot be fully discharged unless the members make exhaustive inquiry into everything relating the " matter, manner, measure, method, and time " of the tax payment. The " incidence " of a tax may be regarded as extending beyond, but it certainly includes, " the fall," " the impact," " the percussion " of the tax on the persons from whom it is exacted, and to understand the incidence, there must be studied not only the nature, strength and direction of the bolt shot from the legislative enactment, but also the accelerating, retarding, directing, and other influences, economic and administrative, which deflect its course or affect its final fall upon different classes of taxpayers.

Many of these influences must be searched for outside the taxing Act, and in the Commonwealth system, some may be looked for in the regulations, the interpretations of its provisions and the rulings on principles and practice which are adopted by the administration, most of which are expressed in a series of papers issued privately at regular intervals and known as " Office Orders." The necessity and value of such rulings and interpretations in the general understanding and clear administration of an Act, which is not only technical itself, but impinges upon many differing interests involving accurate discrimination is evident, and was appreciated by your Commissioners, who at one of their earliest sittings (15th November, 1920) asked for these orders, and were assured by the Federal Commissioner of Taxation " I have no objection to the Commission having these office orders confidentially, but I do not wish them to go any further than the Commission. I want the Commission to know everything, but there are certain things I do not think should go beyond the Commission." An assurance was given to him at once that they would be accepted and treated as confidential. At a later stage of the same sitting it was disclosed that the Commissioner had in contemplation the issue of a handbook containing in abbreviated form the gist of these rulings and interpretations, or of such of them as had survived and were still operative : " I have had that in mind for about three years, but I have not had an opportunity of putting it into practice. I have made a start on them twice." (See Melbourne Evidence, page 352.)

Meantime what has been taking place ? Disregarding for the moment other Acts which have their own series of orders, the Commissioner informed us that over a thousand " general orders on the interpretation of our [income tax] laws have been issued to **all officers** for their guidance in making assessments—they contain everything that you [the examining Commissioner] have in mind, and in some cases they are rulings that have not been referred to the Crown Law Authorities. (See Evidence.)

As knowledge and experience grow, some of the rulings are from time to time superseded by others, in some of which it is confessed that the method laid down in the earlier ruling has been found to be *ultra vires*, and must therefore cease to operate, being superseded by the altered method of the later order. This later order may contain instructions to the staff that excessive assessments previously made under the erroneous ruling are to be revised and amended **only if a taxpayer makes demand for it,** but that the Department is not to itself initiate any revision or amendment. A taxpayer who receives secret information that an amended order has been issued could demand revision of his assessment and secure the advantage of the new order, but the great majority of taxpayers, kept in ignorance of the new order whose wider circulation has been prohibited, naturally fail to apply for the benefit of a right, of whose existence they have no knowledge and which the Department had previously disallowed. As a consequence " the people perish for lack of knowledge." Such inequitable star-chamber proceedings arouse revulsion in the mind of any lover of justice, more particularly if the concealment be deliberate. In regard to opinions contained in these office orders the Federal Commissioner of Taxation informed the Commission—" The public does not give us the benefit of their opinion and **I do not think the Department should give the public its opinion."** As events show, this Commission has also been treated with aloofness.

Several requests for production of these orders or of the promised code evoked some temporizing reason for non-compliance or delay ; the first definite refusal by the Commissioner was contained in a letter dated 24th August, 1921, in which he wrote :—

> " Referring to your letter of 19th instant, intimating that, after review of my evidence before it, the Royal Commission on Taxation has decided to repeat its request to be supplied with copies of Departmental Orders issued in connexion with Income Tax, I have to repeat my statement in evidence on the subject, namely that these orders are not yet in a form in which they may be published for general information, or be supplied to the Royal Commission.
>
> " Too many of the orders consist of statements which appeared in taxpayers returns, and which were circulated to officers for their guidance in dealing with similar cases. Section 9 of the Income Tax Assessment Act forbids my divulging these facts, except for the purpose of carrying out the Act.
>
> " I am unable to divulge them to the Royal Commission."

Notwithstanding that the failure to furnish the rulings in any form was increasingly felt to handicap its work, the Commission exercised great forbearance; but at a sitting attended by the Commissioner, exactly nine months later—on 24th May, 1922—he was asked by its Chairman—

> "I would like to ask you this—Would it be helpful at all to the Commission if the orders were made available to us for reference or inspection?"

And replied—

> "No. Apart from the fact that they are misleading, the bulk of the orders contain details of taxpayers' affairs. That is the difficulty I mentioned to the Commission. It is necessary to reduce the orders to mere statements of a legal position or a position of fact. That was the work I undertook myself; but so many other things crowded in that they had to be held in abeyance."

They have been "in abeyance" for five years. How much longer are they to remain "in abeyance." We are now in the second half of 1922, so that though conception took place five years ago, the process of evolution is still incomplete, and who knows what agony of protracted travail must intervene before its work is perfected?

Yet these are the very orders which, during that period, have been and are now being "issued to all officers for their guidance in making assessments," including every assessor, whether he be a permanent or a temporary officer. So misleading are they that, we are in effect told, they could not be a safe guide for the members of this Commission, who have spent the greater part of two years in the close study of problems of taxation; but these same "misleading" orders are given to the neophytes of the Department as their *vade mecum* to be consulted on all occasions of doubt and followed as an authoritative guide in assessing (some, but not all) taxpayers. Decisions of the British Board of Inland Revenue, by whom the Income Tax Act is administered, are promptly made available for public information, and in the United States of America the "Ordinances" containing departmental interpretations, rulings, digests of cases, &c., are published openly at a nominal charge (a yearly subscription of two dollars entitling the subscriber to a copy of every order issued) and may at once reach all interested persons, their dissemination being assisted by reprints in trade journals and the public press of the country. The importance of such frank and open publication has long been recognised. A century and a-half ago Adam Smith wrote:—

> "The tax which each individual is bound to pay ought to be certain and not arbitrary. The form of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person."

And so generally had the principle been recognised by modern taxing authorities that in recent years Professor Bastable wrote (Public Finance, page 419):—

> "Of high importance in earlier times, but now requiring less emphasis, owing to its general observance, is the canon that **'taxation should be certain.'** When arbitrary power was able to alter imposts at its will, the uncertainty connected with the demands of the tax-collector was a great aggravation of the evil of the heavy burdens imposed. That the citizen in his dealings with public officials should be under the rule of settled law, not of caprice, is not only a financial but an important constitutional maxim."

Whatever reasons may be advanced by its servants for refusing to circulate departmental rulings and interpretations of the Act for the guidance of the public, what justification is there for the refusal to place the fullest information before this Commission, by whom assurance was at an early stage given, that evidence conveyed in confidence would be treated as confidential, and who also suggested that anything of a strictly personal kind disclosing the affairs of any identifiable taxpayer should be erased from the file of Office Orders before it left the Department.

The difficulty in making the orders available to the Commission is stated to be "the bulk of the orders contain details of taxpayers' affairs." "The bulk" cannot mean less than half; it usually implies more. The writer has been informed that not one in ten—possibly about one in 50—of them contains such confidential details. If so, the issue of 90 per cent. or more of them would not involve infringement of Section 9 or any section of the Act.

In Australia the concealment practised has engendered certain evils, among them the flagrant injustice that taxpayers who have communicative friends in the Department have benefited, while innocent ignorance not so befriended has been buffeted. The injuries are none the less because the injured are also drugged and unconscious of the seriousness of their injuries.

Because the Commission has been excluded from information as to the principles adopted and the rulings followed by the Department, indispensable to the creation of reliable opinion on the many questions of detail which contribute to the understanding and appreciation of the incidence of the tax, I am unable to either commend, condemn, or criticise what is frequently named the "present practice of the Department" in reference thereto. My colleagues have felt—though perhaps less acutely than I—and referred in paragraph 586 to the disabilities under which the Commission laboured, in consequence. "The present practice of the Department," which should be as well known and open to all as the King's highway, is in the circumstances a *terra incognita* to all but the few initiated, and I cannot consent to lead or be led blindly through it. I am consequently unable to subscribe to Section XVI. of the Report.

JOHN JOLLY.

RESERVATION.

Paragraph 475 of the Report.

I regret that I am unable to concur in the opinion expressed by the majority of the Commission in the above cited paragraph of the Report. It may be questioned whether that opinion is consistent with the principle of the recommendation of paragraph 471, and, further it departs from the rule of practice observed by the Taxation authorities of the Commonwealth and of all States except Victoria, that income in the hands of a beneficiary is regarded as income from personal exertion or income from property, according to its classification at its origin in the hands of the trustee. For example, the profits of a business carried on by the taxpayer are taxed as income from personal exertion. Hence, if a business is conducted by a trustee, the profits of the business would in the hands of the trustee be classified as income from personal exertion, and, if a share of the profits is payable to a beneficiary, he would be taxed under that classification. As above stated, this is the practice throughout the Commonwealth, except in the State of Victoria. In that State a claim was made by the Commissioner of Taxes upon a beneficiary receiving income derived from a business carried on by trustees, for tax at the rate applicable to income from property. The claim was disputed, and the matter came before the Courts and eventually was carried on appeal to the Privy Council. The Privy Council, confirming the Judgment of the Supreme Court of Victoria, held that income does not change its character for taxation purposes when passing from the hands of trustees to those of beneficiaries. The Victorian Income Tax Act was subsequently amended to render this decision nugatory. **In my opinion it is desirable that income should for taxation purposes retain its character when passing from the hands of a trustee to those of a beneficiary.**

S. MILLS.

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria

1923.
(Second Session.)

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.



REPORT

OF THE

ROYAL COMMISSION ON TAXATION.

FOURTH REPORT.

Presented by Command; ordered to be printed, 13th June, 1923.

[*Cost of Paper*:—Preparation not given; 845 copies; approximate cost of printing and publishing, £44.]

1xE

Printed and Published for the Government of the Commonwealth of Australia by Albert J. Mullett, Government Printer for the State of Victoria.

No. 15.—F.12011.—Price 1s. 6d.

FOURTH REPORT

ROYAL COMMISSION ON TAXATION.

CONTENTS.

	Page
Introduction	179
Land Taxation	180
Commonwealth Land Tax—Twofold object	180
Official Explanation of the Policy of the Federal Land Tax Acts	181
General Scope and Incidence of the Land Tax	182
Relation of Present Report to Previous Recommendations with regard to "Harmonization"	184
Suggested Elimination of "Secondary" Taxpayer	184
Equitable or Beneficial Ownership Basis Recommended	185
A Company to be deemed Sole Beneficial Owner	185
Lessor and Lessee	186
Trust Estates	186
Joint Owners	186
Dual Purposes of Act	186
Effect of Adoption of Beneficial Ownership Basis	186
Should Rates be Progressive or Proportional	187
Taxation of Lessees' Estates in Crown Leaseholds	189
Statutory Basis of Land Valuation	189
Effect on State Policy	190
Separate Aggregation Urged	190
Separate Aggregation—Revenue effect	191
Anomalies Created	191
Segregation of Lessees' Interests	191
Should there be Differentiation in Taxation between Urban and Rural Lands	191
Definitions as to Value	192
Improved Value	192
Unimproved Value	192
Value of Improvements	193
Establishment of Land Valuation Bureau	194
Recommendations of the Crown Leaseholds Commission	194
Valuation of Improvements	195
New South Wales Valuation Act	195
Practice in Other States	195
Use of Valuations by Local Authorities	195
South Australian Bill	196
New Zealand Act	196
Valuation Bureaux	196
Board of Appeal	198
Relief Board	199
Office Orders (Land Tax)	199
Comments on Various Sections of the Commonwealth Land Tax Assessment Act	200
Section 3. Definitions	200
Absentee	200
Companies not deemed Absentees	201
Owner	202
"Improved Value," "Unimproved Value," "Value of Improvements"	202
Secrecy	202
Section 11. Exemption	202
Wording of Sub-section (2) (*b*)	202
Amount of Exemption	202

CONTENTS *continued.*

	PAGE
Section 12. Land owned on the 30th June	203
,, 13 (*d*) Lands owned by Building Societies	203
,, 15. Returns	203
,, 17. Valuations	203
,, 20. Amended Assessments—Time Limit for Payment	203
,, 21 (1). Time Limit—*Re* Valuations	203
,, 23. Assessments and Documents under the hand of the Commissioner	204
,, 25. Life Tenants	205
,, 26. Holders of Crown Land under right of purchase	205
,, 27. Leases entered into after Commencement of the Act	206
,, 27 (1). Is the Proviso equitable	207
,, 28. Leases entered into prior to Commencement of the Act	208
,, 27 and 28. Economic Rent	209
,, 29. Lessees' Estates in Crown Leaseholds	210
,, 31 and 32. Liability to tax of Mortgagees and Mortgagors	210
,, 33. Land vested in Trustees	210
,, 35. Equitable Owners	211
,, 36. Land owned by Married Women	211
,, 37. Buyers and Sellers of Land	211
,, 38. Joint Owners of Land	212
,, 39. Land owned by Companies	213
,, 41. Land owned by Mutual Life Assurance Societies	213
,, 42A. Land controlled by Persons who are not the Owners	213
,, 43. Secondary Taxpayers	214
,, 44 and 45. Appeals	214
Extension of Time for Payment, and Payment by Instalments	215
Section 50. Additional Tax—Time Limit for Payment	215
Refunds—Time Limit for Applications	215
Section 59. Deficiency of Tax—Payment of	215
,, 65. Power to obtain Evidence	216
,, 66. Relief	216
DLAND RAILWAY COMPANY OF WESTERN AUSTRALIA	216

The numbering of the pages and paragraphs continue the numbering of the First, Second, and Third Reports.

COMMONWEALTH OF AUSTRALIA.

FOURTH REPORT OF THE COMMISSIONERS.

To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY:

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

(1) The equitable distribution of the burdens of taxation;
(2) The harmonization of Commonwealth and State taxation;
(3) The giving to primary producers of special consideration as regards the assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions; and
(4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour, in continuation of our First, Second, and Third Reports, dated respectively 27th October, 1921, 13th April, 1922, and 21st July, 1922, to report hereunder upon the following subjects coming within the Terms of Reference:—

(19) Land taxation;
(20) Relation of present Report to previous Recommendation with regard to harmonization;
(21) Suggested elimination of "Secondary Taxpayer";
(22) Should rates be progressive or proportional;
(23) Taxation of Crown leaseholds;
(24) Should there be differentiation in taxation between urban and rural lands.
(25) Definitions as to Value.
(26) Establishment of Land Valuation Bureau.
(27) Board of Appeal.
(28) Relief Board.
(29) Office Orders.
(30) Comments on various Sections of the Commonwealth Land Tax Assessment Act.
31) Midland Railway Company of Western Australia.

SECTION XIX.

LAND TAXATION.

607. Some witnesses who appeared before us favoured the abolition of all other forms of taxation in favour of the imposition of a Single (Land) Tax. Others, while conceding the reasonableness of Land Taxation either by the Commonwealth or by the States some favouring one course and some the other held that it is economically unsound and politically inexpedient for both Taxing Authorities to levy concurrently a tax upon land. There were others again who failed to see any justification, under normal conditions, for the imposition of Land Taxation by either Commonwealth or States.

608. A witness representing the United Graziers Association of Queensland challenged the continuance of Land Taxation in Australia on three specific grounds, viz. :—

(1) That the tax is economically unsound, in that it singles out one form of wealth for taxation, while other forms of wealth are free from any such burden ;
(2) That Land Taxation ignores the principle of ability to pay ;
(3) That land is held in Australia mainly as a means of livelihood, and therefore corresponds with the tools of trade of a workman.

609. On the other hand, the advocates of Land Taxation with equal conviction and definiteness advance reasons in justification of the tax.

Such reasons were stated by the Right Hon. W. A. Watt, P.C. (then State Treasurer), who, in moving the second reading of the Victorian Land Tax Assessment Bill in 1909, quoted with approval the following remarks of Mr. Ure, then Lord Advocate of Scotland :—

> " First, I would say that land differs from all other forms of property in this, that its existence is not due to its owner ; secondly, it is limited in quantity ; thirdly, it is absolutely essential to existence and production ; and, fourthly, it owes its value exclusively to the presence of the market created by the activity of the community."

In addition to the essential difference, thus concisely expressed, between land and all other forms of property, which is commonly regarded as warranting an impost upon it, further justification for taxation of land is found in the protection which the State affords to ownership, and in the fact that the increment in land values is always largely due and often wholly due to the activities of the community and not to the special exertions of the land-owner.

610. Whatever estimate may be formed as to the relative weight of these conflicting opinions, we have felt constrained to view the position from a practical rather than from a theoretical point of view. The Land Tax is with us. If the taxation of land were abandoned, the present revenue necessities of Australia could not be met without the imposition of other forms of taxation which might be open to greater objections and involve difficult and undesirable financial readjustments, both private and public. Our study of the general position confirms us in the opinions expressed in our recommendations respecting the harmonization of Commonwealth and State Taxation. It is our unaltered conviction that in the adoption of those recommendations lies the solution of the difficulties of the present complex and dual systems of Land Taxation.

> *Note.*—It is to be noted that in this paragraph and in paragraphs 631, 632 and 660 (1) the expressions of continued adherence to recommendations already made in the section of our Second Report on the subject of Harmonization of Commonwealth and State Taxation (paragraphs 249 and 250) are to be read in the case of Mr. Commissioner Jolly as referring to the recommendations made by him in his reservation. (See Second Report, paragraph 256.)

611. **Commonwealth Land Tax—Twofold Object.**—The passing of the Commonwealth Land Tax Assessment Act in November, 1910, marked the entry of the Federal Parliament into the field of direct taxation. Reference to the debates in Parliament on the Bill appear to justify the conclusion that the Government, in introducing the measure, had a twofold object in view, viz., the breaking up of large estates and the raising of revenue.

612. The then Prime Minister (Right Hon. Andrew Fisher, P.C.), in the course of his second-reading speech on the Bill in August, 1910, said—

> " Unimproved value taxation is a sound principle, and, while the incidence will tend to break up large estates and help to develop the country from an economic point of view without any other embarrassing conditions, it is a proper kind of taxation for the purpose of raising Commonwealth revenue."

On the ground that the Bill was one which, though nominally a taxation measure, was in reality one of Land Settlement policy, its constitutionality was questioned during the debate in Parliament.

613. In 1911 the validity of the law was challenged before the High Court in what is known as the Osborne case. Two of the various grounds of objection taken to the *Land Tax Assessment Act* 1910 and the *Land Tax Act* 1910 were—

(2) That the Acts are not in substance an exercise of the taxing powers of the Commonwealth, but an attempt to regulate the holding of land in the Commonwealth, which, it is contended, is *extra vires* the Parliament ; and
(3) That the Acts, either together or separately, are in contravention of Section 55 of the Constitution.

The Court unanimously held that the Act as a whole was valid.

Griffith, *C.J.*, in the course of his Judgment, remarked :—

> " In support of the second objection—that is, that the Acts are not in substance an exercise of the power of taxation—it is contended that the real purpose of the so-called taxation is not so much to raise revenue as to prevent the holding of large quantities of land by a single person. There is no doubt that that may be the consequence of the imposition of a progressive Land Tax, and it may well be that that indirect consequence was contemplated and desired by the Legislature. But, as was pointed out by this Court in *R. v.* Barger, although it is a frequent result of taxation to bring about indirect consequences which could not practically or could not so easily be brought about by other means, yet the circumstance that taxation has such a result is irrelevant to the question of the competence to impose the tax. In my opinion, these Acts are, in substance as well as in form, Acts imposing taxation, although there may be some provisions which may be open to objection upon other grounds. That objection therefore fails."

614. **Official Explanation of the Policy of the Federal Land Tax Acts.**—The Dominions Royal Commission (which in the course of its inquiry sat in Melbourne in 1913), before leaving England received evidence in which the policy of the Federal Land Tax Acts was attacked. The late Mr. G. A. McKay, then Federal Commissioner of Land Tax, submitted a memorandum to the Commission in Melbourne which purported to set out the reasons that actuated Parliament in passing the measure into law, and criticised certain suggestions made for the amendment of the Acts by English witnesses.

615. In the course of his memorandum, Mr. McKay stated :—

> " Admittedly, the graduation method deals more severely with the owner of the largest landed estates. The reason for the discrimination against him is twofold. There is the primary object of securing from those deemed best able to bear the impost the revenue needed to meet the growing financial necessities of the Commonwealth in connexion with defence and social betterment schemes. A secondary, but very important object is to facilitate settlement. It is considered to be opposed to the best interests of Australia to permit large aggregations of land in the hands of a few, that are fit for occupation by the many. The expectation of the authors of the Act was that those subject to the largest tax would be induced to escape the burden by disposing of their lands. In the three years the tax has been in operation, over £20,000,000* worth of land (unimproved value) has passed into the hands of persons who are not taxable under the Federal law.
>
> " The principle of graduation in taxation is not new. It has long been applied, and with much greater severity, in connexion with Probate Duties. The basic reason is social rather than economic. The view is held by the present dominant party in Federal politics that the ownership of land in very large estates is opposed to the best interests of the Commonwealth. The scheme of taxation was therefore designed to give the large land-owner the alternative of surrendering part of his large estate or paying more heavily for the privilege of holding it.
>
> " The reasons for the higher rate applicable to the land of absentees are broadly that the revenues earned in Australia are sent out of Australia, though, in common with other property in Australia, the land of absentees benefits by public expenditure, and is protected by the machinery of Australian Law. Also in certain instances the land is held without adequate development while participating in unearned increment due to the efforts or enterprise of other persons and of the Governments of Australia.
>
> " It should, however, be remembered that no company or joint ownership or trustee, as such, can be dealt with as an absentee.†
>
> " I have already mentioned that over £20,000,000 worth of land (unimproved value) has passed out of the field of Federal land taxation since the inception of the Act. The whole of these alienations cannot reasonably be claimed as evidencing the increased settlement of lands.

* Later information shows that up to 30th June, 1919, the amount is approximately £77,250,000.
† For Recommendation of the Commission with regard to Absentee Companies, see para. 733.

" Many families have subdivided their joint interests so as to secure the advantage of lower rate of tax and separate deduction for the individual share. In these cases the total ownership remains virtually the same.

" Other joint ownerships, such as partnerships, &c., have followed a similar course for similar reasons. The Federal law permits the joint working of land without aggregating the interests for taxation purposes, excepting in the cases where the land is an asset of the partnership.

" Some absentees sold their Australian lands in the fear that the tax would seriously lower their income and that they might be subject to the penalties in the law provided for default.

" Some land-owners, whose holdings were heavily mortgaged and whose income provided little or no margin over their interest charges, were unable to pay the tax, and got rid of their holdings.

" In many cases, however, in anticipation of the tax, and during the period it has been in operation, land has passed from the large to the smaller ownership by ordinary processes of sale.

" In some notable cases, the tenants in large estates were permitted by the owners to purchase on favorable terms. The rate of sale has diminished since the inception of the tax. In the first year of the tax £11,500,000 worth of land (unimproved value) passed out of the taxable field. In the second year the amount receded to £9,000,000, and for the first nine months of the third year to £2,000,000, or an estimated total of £3,500,000 for the whole year.

" The reduction, in my opinion, has been caused by—

(1) The passing out of the taxable field of those who feared the incidence of the tax, such as many absentees ;
(2) The completion of the schemes of apportionment of joint owners and families who previously were jointly taxable ;
(3) The lessening reserve of large estates where the margin of difference between tax and net revenue, after providing for interest charges, &c., was small ;
(4) The general condition of the money market, which precluded speculative dealings in land, and even interposed obstacles in the way of persons who desired bank or other financial assistance in purchasing land for occupation ;
(5) The persistence of good seasons, which made it easy for land-owners to continue to earn such revenues that the payment of the tax was not difficult. Even in cases where the burden has been felt, the land-owner has been willing to pay rather than break up a holding which he may have owned for many years and to which he may have a sentimental attachment.

" The tax undoubtedly is preventing the accumulation of land in large estates, and its general effect is in the direction of inducing subdivisions of the estates now held."

616. **General Scope and Incidence of the Land Tax.**—Tax on a graduated scale is charged on each resident, joint ownership, trust estate, company, or institution not specifically exempted. The tax operates where the interests in land amount to £5,000 or over of unimproved value, except in the case of an individual absentee owner, who is taxed upon the aggregate unimproved value of his interests in land, with no exemption.

617. Land Tax is due and payable each year on an appointed date, as to which not less than one month's notice is given by publication in the *Government Gazette*.

618. No deduction is allowed in respect of the amount of any mortgage on the land, a mortgagee being expressly exempted from tax on his interest under the mortgage, unless he has entered into possession of the land and has remained in possession for three years. Even in that case the mortgagor continues to be liable for payment of the tax as primary taxpayer.

619. For the protection of the revenue, if the Commissioner is of opinion that a land-owner, in his return, has understated the unimproved value of his land to the extent of 25 per cent. or more, the Commissioner may apply to the High Court (constituted by a single Justice, whose decision is final and without appeal), and the Court may declare that the Commonwealth is entitled to acquire the land. As compensation, the owner is entitled to receive an amount based on the " improved value of the land, obtained by adding the fair value of improvements to the unimproved value stated in the owner's return, plus 10 per cent. of that improved value by way of allowance for compulsory dispossession."

620. The Act provides that, where a taxpayer has become bankrupt or insolvent, or has suffered such loss that the exaction of the full amount of tax would entail serious hardship, or that by reason of drought or adverse seasons the returns from the land have been seriously impaired, a Board, consisting of the Commissioner (who acts as Chairman), the Secretary to the Treasury, and the Comptroller-General of Customs, may release the taxpayer, wholly or in part, from his liability.

621. " Interests " in land include freehold interests, leasehold interests, and beneficial interests under trusts.

622. The aggregation in one assessment of all interests in land held by any one person or entity secures to the revenue the collection of tax at the highest rate applicable in each case.

623. The scheme of the Act involves in a number of cases the placing of liability to taxation upon two taxpayers in respect of the same land, one being called the primary taxpayer and the other the secondary taxpayer. Examples are—

A partner's undivided interest in land owned by a partnership as primary owner (Partners are Secondary Owners, Section 38 (3) (4)).
A shareholder's undivided interest in land owned by a company as primary owner (Shareholders are Secondary Owners, Section 39).
A beneficiary's undivided interest in land held under trust for him and others (Trustees are Primary Owners ; Beneficiaries, Secondary Owners, Section 33).
The owner of the legal estate in land is the primary taxpayer, the owner of an equitable estate in the same land, secondary taxpayer (Section 35).

624. The Commissioner of Taxation explains the provisions with regard to primary and secondary taxpayers thus :—

" Where the primary taxpayer is not exempt, the land or interest in land is always included in his assessment, as he is the legal owner (Section 35). The secondary taxpayer is an owner either at law or in equity or by special provision in the Act, and the interest is included in his assessment for the purpose of ascertaining the rate of tax payable on each £1 of taxable unimproved value held by him (Section 11). If his rate of tax is less than the rate of tax paid on the interest in the land by the primary owner, the secondary owner receives a rebate of the part of his own tax which is proportionate to the doubly assessed interest included in his assessment. But if his rate exceeds that of the primary taxpayer, the rebate to the secondary taxpayer is limited to the part of the primary owner's tax which is proportionate to the secondary owner's interest in the primary owner's land (Sections 43 and 43A). The primary owner never receives a rebate."

625. The effect of the scheme of primary and secondary taxpayers is to cause the rate of tax payable by the secondary taxpayer to be raised,* because, in determining his total ownership and the rate of tax applicable thereto, there is added to the value of his severally owned lands his proportionate interest in the lands of the primary taxpayer (*e.g.*, a company or a partnership of which he is a member). Where the rate of tax payable by the secondary taxpayer is higher than that of the primary taxpayer, the former is under the further obligation (inherent in the scheme) of having to pay in respect of his interest in the primary taxpayer's land the difference between the lower rate payable by the primary taxpayer and the higher rate imposed on himself.

626. In the case of sales of land, the buyer is liable to the tax as primary taxpayer so soon as he has obtained possession of the land, and the seller is liable to assessment as a secondary taxpayer until possession of the land has been delivered to the purchaser and at least 15 per cent. of the purchase money has been paid. The Commissioner has power to exempt the seller if he is satisfied that the agreement for sale has been made in good faith and not for the purpose of evading the payment of tax and that the agreement is still in force.

627. As a protection to the revenue against attempts to evade the tax by persons who formally dispose of their interest in land, but actually retain full control of the land, Section 42 of the Act provides :—

" Notwithstanding any conveyance, transfer, declaration of trust, settlement, or other disposition of land, whether made before or after the commencement of the Act, the person making the same shall, so long as he remains or is in possession or in receipt of the rents and profits of the land, whether on his own account or on account of any other person, be deemed (though not to the exclusion of any other person) to be the owner of the land."

* This does not apply in the case of an absentee whose total interests in land do not exceed £5,000, as absentees are taxed at a flat rate of 1d. in the £1 on every £1 of unimproved value up to £5,000, the exemption of £5,000 allowed to resident land-owners not being allowed to absentees.

628. Section 40 of the Act provides that two or more companies consisting of substantially the same shareholders shall be assessed as one company. It also provides that companies are deemed to consist substantially of the same shareholders if not less than three-fourths of the paid-up capital of each of them is held by or on behalf of the shareholders of the other. Shares in one company held by or on behalf of another company are deemed to be held by the shareholders of the last-mentioned company.

629. Within a time prescribed by regulation a taxpayer may lodge an objection against an assessment for consideration by the Commissioner, and, if dissatisfied with the decision of the Commissioner, may appeal therefrom to the Court, or alternatively he may lodge an Appeal direct with the Court.

630. As might be supposed from its scope (including as it does both the valuation of land and the assessment of tax thereon) and its general complexity, the Commonwealth Land Tax Assessment Act has given rise to a great deal of litigation. A fruitful source of dispute between taxpayers and the Department not always resulting in litigation, is the question of valuation. **Should our recommendations** respecting the elimination of the "secondary" taxpayer from the scheme of the Act (See paragraph 638) and the entire separation of land valuation from the Taxation Department (See paragraph 714) **be given effect, it is anticipated that not only will there be the gain of greater simplicity in the law, but that the occasions of friction between taxpayers and the Department will be much less frequent and that the cost of administration will be materially reduced.**

SECTION XX.

RELATION OF PRESENT REPORT TO PREVIOUS RECOMMENDATIONS WITH REGARD TO "HARMONIZATION."

631. In our Second Report (paragraphs 249-50) we recommended, among other things, that the power to impose Land Tax should, subject to certain reciprocal action, be exclusively vested in the States, reserving however the over-riding powers of the Commonwealth in case of War. While that was recommended as part of the ultimate and permanent solution of the question of "Harmonization," we also recommended that an agreement be entered into between the Commonwealth and States providing, *inter alia*, that during a provisional period the imposition and collection of Land Tax be reserved to the States. Notwithstanding these recommendations we have felt it our duty to report in some detail upon the present Commonwealth Land Tax Law and upon matters of principle affecting the construction and working of Land Tax Statutes generally.

632. We desire to emphasize, however, that the discussion on these matters is not intended to suggest in any way a departure from the opinions expressed in those recommendations, which have indeed been strengthened by the further consideration we have given to the subject.

633. **If the recommendations referred to in paragraph 631 be adopted and, among other changes, the imposition and collection of Land Tax be exclusively in the hands of the States, some of the suggestions in the succeeding Sections of this Report should, we submit, receive consideration by State Authorities.* If for any reason the adoption of those recommendations be deferred, the suggestions should, we submit, form the basis of an amendment of the Commonwealth Law.**

SECTION XXI.

SUGGESTED ELIMINATION OF "SECONDARY" TAXPAYER.

634. The Commonwealth Land Tax Assessment Act differs from the corresponding State Statutes in some important features, particularly in its imposition of tax upon land at progressive rates instead of at a flat rate, such as is adopted in the majority of the States. The consequent aggregation of interests in land for the purpose of taxation, the introduction into the Act of the scheme of "primary" and "secondary" taxpayers, the mode of assessment in the case of joint ownership, and other arbitrary provisions, lead to complexities which have been the subject of much complaint on the part of many witnesses. With regard especially to the provision relating to joint ownerships, an experienced solicitor in a communication to the Commission remarks :—

> "The result of importing a purely artificial system is seen in the extraordinarily difficult provisions and the great litigation that has ensued. So difficult are these provisions and the decisions thereon that there must be very few trained lawyers throughout Australia who have grappled with and understood them. I should think that there is no other such difficult set of provisions in any other Taxation Act, or, indeed, in any other modern Act in the world. (In the old days the same result followed wherever artificial systems of conveyancing or legal procedure were in existence. When these absurd systems were done away with, we arrived at the simplicity of the Torrens Real Property Acts and the comparative simplicity of Supreme Court procedure). The existence of these complicated clauses in the Federal Act—especially as it is a Taxation Act—causing worry and expense to so great a number of people, is itself a state of things that ought to be remedied."

* Some of the suggestions in the Report are based upon provisions of the Commonwealth Land Tax Assessment Act which are absent from the corresponding State Acts.

635. In our opinion, it is very desirable that the present complex provisions of the Act should be superseded by a simpler system. Perhaps the greatest simplification possible as the result of the adoption of any one alteration of the Act would arise from confining taxation either to—

(*a*) legal ownership, or to
(*b*) equitable or beneficial ownership

of land or of interests in land, thus eliminating the "secondary" taxpayer.

636. We have given careful consideration to the desirability of selecting one or other of these criteria as the sole test of liability to taxation under the Commonwealth Land Tax Assessment Act. The adoption of either would have important results upon the revenue, and in either case modes of avoiding the incidence of the tax (some of which are available under the present law) would present themselves to taxpayers.

637. The legal ownership basis is open to the further objections that in some cases it may cause serious hardship, and that, in the numerous cases where legal ownership and beneficial ownership are not united in the same person, liability to taxation arises from a purely technical relation to the subject land.

638. **Equitable or Beneficial Ownership Basis Recommended.—We are unanimous in recommending the adoption of equitable or beneficial ownership of an estate or interest in land as the sole basis of liability to taxation,** for the following reasons :—

(1) It is **simple.** Its underlying principle is readily understood.
(2) It is a **natural** basis. It does not rest upon technical title, but upon beneficial interests.
(3) It is more **equitable** than either the dual scheme of the present Act or the legal ownership basis taken as the sole test of liability to taxation.
(4) It tends to prevent avoidance of the tax by means of technical expedients.

639. **A Company to be deemed Sole Beneficial Owner.**—An examination of the different classes of cases to which any such test of liability to taxation must be applied shows that there is at least one instance in which exceptional treatment is desirable—that is, the case of Companies. Consideration of the practical difficulties and complexities which would be inseparable from the method of taxing directly all beneficial interests of shareholders in Companies have led us to the conclusion that, while applying the principle of beneficial ownership as far as practicable, it will be found desirable to treat a Company owning land as the sole entity to be taxed in respect thereof, and not to regard the individual shareholder's proportion as constituting a taxable interest, either separately or in aggregation with other landed interests. In support of this view, it may be pointed out that its adoption will considerably shorten and simplify the present procedure on the part both of the Department and the taxpayer. The aggregation of all interests in land represented by shares held in Companies with other landed interests frequently involves a series of elaborate calculations, adding materially to administrative cost and often disclosing only a very trifling liability to tax or an absence of such liability.

640. According to statistics published in the Seventh Annual Report of the Commissioner of Taxation relating to the assessment of landed interests as at 30th June, 1918, the additional revenue due to the inclusion of share interests was in the case of resident taxpayers £11,156, and in the case of absentee taxpayers £1,079. The collection of this comparatively small amount probably involved a disproportionately heavy cost of administration, and certainly occasioned a considerable degree of trouble to the Companies and individuals affected.

641. The present Commonwealth Act taxes a Company on the aggregate unimproved value of its lands, and also requires each shareholder for the purpose of taxation to add his individual proportion of the Company's land to any other land which he possesses, and consequent thereto necessitates intricate calculations and adjustments for the avoidance of double taxation. The adoption of our suggestion to treat the Company as the only entity to be taxed in respect of its land would involve some revenue loss, but much less than the loss which would be entailed if the beneficial interests of shareholders were taxed, to the exclusion of the Company, which would be the legal (and assumed beneficial) owner. A Company owning lands of considerable aggregate value may consist of a large number of shareholders whose individual interests in respect of such land would not bring them within the taxable field. To this generalization there may be a few—it must be a very few—exceptions where, of the majority of the shareholders each owns individually more land and is subject to taxation at a higher rate than the Company. In most cases the revenue would suffer if, in the case of a Company, the taxation of the beneficial interests of shareholders displaced that of the legal interests of the Company, and if it be an object of the Act to break up all large aggregations of land, irrespective of whether such lands are owned by one person or by a partnership, or by a Company or other corporate body including many persons, that object would be partially defeated if lands owned by a Company were not taxable in its hands.

642. **Lessor and Lessee.**—Under the beneficial ownership basis, the separate interests of Lessor and Lessee would be determined. The Lessor's interest would be ascertained by deducting from the total unimproved value of the land the value of the Lessee's interest (if any). The Lessee's interest (if any) would be the difference between the rent payable and the ascertained economic rent, capitalized for the unexpired term of the Lease at the prescribed rate of interest. The difference so ascertained would be additive to the unimproved value of any other interest in land held by the Lessee, and, if the total of those interests exceeds £5,000 (the amount of exemption), the Lessee will be taxable on the excess.

643. **Trust Estates.**—In the case of Trust Estates in which the Trustees are now assessed and liable in respect of Land Tax as if beneficially entitled to the land, the beneficiaries only would be assessed and taxed in respect of their individual interests.

644. **Joint Owners.**—The application of the principle of beneficial ownership or interest seems to us to involve also a radical alteration of the Act in respect of the provisions relating to joint owners, which provisions have been among the most fruitful in litigation of all those embodied in the Statute. The term "Joint Owners" under the Definition Clause includes not only those who have a technical joint ownership, but also those who own land in common, whether as partners or otherwise, and persons who have a life or greater interest in shares of the income from the land. This definition is read as including shareholders in Companies. We have already given reasons (see paragraph 639) for the exceptional treatment of Companies. With regard to other forms of joint ownership, no practical difficulty would arise in the adoption of the beneficial ownership basis.

645. **Dual purposes of Act.**—The Parliamentary Debates at the inception of the Commonwealth Land Tax indicate that the taxation was not introduced wholly for revenue purposes, but was intended to effect the subdivision of large estates, and thereby, as was hoped, to increase settlement in country districts.

646. **Effect of Adoption of Beneficial Ownership Basis.**—The principle of taxing beneficial ownership or interests only, which we recommend, will, we recognise, have an effect both upon the revenue aspect of the Act and upon its operation as a means of promoting the subdivision of large estates.

647. With regard to **revenue,** we think the effect of the adoption of the principle will be to cause reduction; but we are not in possession of adequate data for the compilation of an estimate of the extent of that reduction.

648. If the Commonwealth desires to maintain the revenue from Land Tax at the present level, it is obvious that any reduction in tax due to the adoption of an altered principle could be met by reducing the exemption, by increasing the rates, or by a combination of those two courses.

649. The practice of the Commonwealth Taxation Department is to require returns from all land owners possessing land of an unimproved value of not less than £3,000. If the exemption were reduced to that amount, at which point the progressive scale of rates would begin to operate, the effect would be, not only to bring into the field of taxation a large additional value, but to increase the amount of tax payable on all sums in excess of £5,000, the present exemption. This latter effect will be seen from the illustrative figures shown in the following table :—

Total Unimproved Value.	Tax with Present Exemption of £5,000.	Tax if Exemption Reduced to £3,000.
£	£ s. d.	£ s. d.
3,010	..	0 0 10
4,000	..	4 7 9
5,000	..	9 4 5
5,010	0 0 10	9 5 6
6,000	4 7 9	14 10 0
10,000	26 7 9	40 1 1
20,000	112 10 0	135 1 1
35,000	325 0 0	360 17 9
50,000	637 10 0	686 14 5
75,000	1,380 11 1	1,452 0 0
200,000	6,062 10 0	6,137 10 0

650. On the present scale of rates and with the present exemption, when the unimproved value reaches £80,000 (taxable value £75,000 in the case of a resident owner), the rate on the last £1 is 9d., and the average rate is 5d. If the owner is an absentee, as no exemption is allowed, the taxable value is the whole £80,000, the first £5,000 of which is taxed at a flat rate of 1d. in the £ and the balance at the progressive rate. In that case the rate on the last £1 is 10d., and the average rate is 5.6875d.

651. From the point of view of the **"breaking up"** effect of the Land Tax legislation, the adoption of the beneficial ownership basis, in comparison with the present Act, would probably lessen the pressure to some degree, but would not withdraw that pressure, as individual interests other than shareholding interests would still be aggregated. Compared with the beneficial ownership basis, the legal ownership basis might cause a greater reduction in revenue, as it appears to offer larger facilities for legal avoidance of the tax, but it would probably have a somewhat stronger influence in causing the subdivision of estates.

SECTION XXII.

SHOULD RATES BE PROGRESSIVE OR PROPORTIONAL?

652. There is one aspect of the rates question upon which some comment may be made, and that is as to whether rates should be progressive or proportional, *i.e.*, flat. The practice of the Australian States in this respect is not uniform. Four of the States impose a Land Tax at flat rates, while the other two have progressive rates. The rates in the several States are :—

New South Wales* ..	The rate is 1d. in the £1 on the unimproved value.
Victoria	The rate is ½d. in the £1 on the unimproved value; minimum tax 2s. 6d.
Queensland.. ..	The rates are progressive, commencing at 1d. in the £1 where the taxable value is less than £500, and rising to 6d. where the value is £75,000 and over. Agricultural land of less value than £750 and "undeveloped" land are taxed at special rates.
South Australia ..	The rate is ½d. in the £1 on the unimproved value, but there is an additional charge of ½d. in the £1 upon all land the unimproved value of which exceeds £5,000.
Western Australia ..	The rate is 1d. in the £1 on the unimproved value.
Tasmania	The rate rises from 1d. in the £1 on the unimproved value up to £2,500, increasing by successive steps to 2½d. in the £1 at and above an unimproved value of £80,000.

653. Except in South Australia and Tasmania, certain amounts of unimproved value are exempted from taxation :—

New South Wales ..	The amount exempted is £240.
Victoria	The amount exempted is £250, but this exemption is on a diminishing scale for every £1 of value in excess of £250, so that when the value is £500 or over no exemption is allowed.
Queensland.. ..	The amount exempted is £300; but the exemption is not allowed to a company or an absentee.
Western Australia ..	The amount exempted is £50.

654. It will be seen that the balance of practice in Australia is in favour of land taxation at flat rates, also that in the States where a flat rate is levied the maximum amount of exemption is £250. The exemptions seem to be based on the **practical** view that the cost of collection may be greater than the tax where the unimproved value is small.

655. It may be assumed that, where progressive scales exist, the tax has been devised, not solely for revenue purposes, but in part to bring about subdivision of estates. If revenue is the only reason for imposing a tax upon land, then, in our opinion, the simpler method of a flat rate should be adopted. In this connexion it may be remarked that Land Tax is of the nature of a Capital Tax, and differs essentially from Income Tax, since it is levied independently of the existence or amount of any return from the land, and also from the fact that the value of the land owned is a much less reliable measure of ability to pay than is the amount of income. Where, however, the breaking up of estates is an important object of the tax, progression appears necessary, at east in a Commonwealth tax. In a State Land Tax it would be less necessary, because other means to produce the same effect are open to State Legislatures, which under the Constitution are not at present open to the Commonwealth Legislature.

656. Whether the Commonwealth progressive Land Tax has sufficiently achieved its purpose in causing the subdivision of estates is a question upon which we have not adequate evidence to justify expression of a positive opinion. In the opinion of certain witnesses who appeared before us, the subdivision of estates has been carried far enough. It was pointed out

* In New South Wales the State directly collects Land Tax from certain freeholds within the Western Division only, the general provisions of the State Land Tax Assessment Act being suspended in respect of lands situate within Shires or Municipalities in which tax is levied by the local authority upon the unimproved capital value of lands, and at a rate of not less than 1d. in the £1.

that there are numerous areas in Australia which at present can be profitably worked only in large blocks, and that enforced subdivision within those areas would have a detrimental rather than a beneficial effect on settlement. A New Zealand Committee which recently reported on the question of Land Taxation, expressed the opinion that in that Dominion, where a progressive Land Tax has been in operation since 1893, the breaking-up effect of the tax has been carried to the point at which further action would be injurious to the country, and it recommends a reversion to taxation at a flat rate.

657. Apart from the question of the desirability of causing the subdivision of large estates by the imposition of Land Tax at progressive rates, there is the question whether necessity exists for the continuance of a progressive tax in order to prevent the re-aggregation of land to a large extent in the hands of individuals. Where lands which are suitable for closer settlement have been subdivided and have become occupied by a farming community, there is in our opinion little danger that the cessation of progressive land taxation would result in the re-accumulation of large areas in the hands of individuals.

658. We have been officially informed that up to the 30th June, 1919, an aggregate unimproved value of approximately £77,250,000 had passed out of the taxable field. It is not suggested that this result is attributable wholly to the operation of the Land Tax. Other forces, *e.g.*, the tendency to division of lands when devolution occurs under wills and settlements and the inducement to sell in subdivision when good prices are obtainable, would be operative even if there were no Land Tax, although a progressive Land Tax adds impetus to such movements.

659. One effect of an alteration from a progressive scale of Land Tax to a proportional or flat rate would be to relieve taxpayers who are on the higher grades of the scale as to aggregate value. On the figures appearing in the Seventh Annual Report of the Commissioner of Taxation, it would seem that to produce by a flat rate, while maintaining the present exemption of £5,000, the same amount of revenue as that now raised through Land Tax, would require a rate of about 3½d. in the £. If the exemption were reduced to £3,000, a flat rate of about 2¾d. would produce about the same revenue. If a flat rate of 3½d. in the £ were adopted, taxpayers having land of a taxable unimproved value of less than £46,875 would pay more than they do at present, while upon unimproved values exceeding that sum the tax would be less. For example, a taxpayer whose land has a taxable unimproved value of £18,750 would pay 1½d. in the £ more than he now does, while a taxpayer whose land has a taxable unimproved value of £75,000 would pay 1½d. in the £ less than at present. The following Table gives further examples of the tax which would be payable on lands of certain unimproved values if flat rates were adopted in lieu of the present Commonwealth progressive scale. It will be noted also that the Table shows that a rate of 1d. in the £ upon unimproved values without any exemption would produce approximately the same revenue as is now raised by the progressive tax :—

LAND TAX PAYABLE BY RESIDENT OWNER.

1.	2.	3.	4.	5.	
Total or Aggregate Amount of *Unimproved* Value of land.	Tax Payable.				Remarks.
	Under present Commonwealth Act.	At Flat Rate of 3¾d. in the £ with £5,000 Exemption.	At Flat Rate of 2¾d. in the £ with £3,000 Exemption.	At Flat Rate of 1d. in the £ with no Exemption.	
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
1,000	..	..	..	4 3 4	The Tax in Column 2 is calculated upon the rates current prior to the imposition in 1918 of the Sur-Tax of 20 per cent. This Sur-Tax has now been repealed.
3,000	..	..	..	12 10 0	
3,010	..	..	0 2 4	12 10 10	
4,000	..	..	11 9 2	16 13 4	
5,000	..	..	22 18 4	20 16 8	
10,000	26 7 9	72 18 4	80 4 2	41 13 4	
11,727	38 1 9	98 2 1	**100 0 0**	48 17 3	
11,857	38 6 0	**100 0 0**	101 9 9	49 8 1	
A **14,683**	**61 3 8**	141 4 3	133 17 4	**61 3 7**	
18,817	**100 0 0**	201 9 11	181 4 9	78 8 1	
20,000	112 10 0	218 15 0	194 15 10	83 6 8	
24,000	159 7 9	277 1 8	240 12 6	**100 0 0**	
30,000	243 1 1	364 11 8	309 7 6	125 0 0	
40,000	418 1 1	510 8 4	423 19 2	166 13 4	
B **40,724**	**432 5 0**	520 19 6	**432 5 1**	169 13 8	
50,000	637 10 0	656 5 0	538 10 10	208 6 8	
C **51,875**	**683 11 11**	**683 11 11**	560 0 6	216 2 11	
60,000	901 7 9	802 1 8	653 2 6	250 0 0	
70,000	1,209 14 9	947 18 4	767 14 2	291 13 4	
75,000	1,380 11 1	1,020 16 8	825 0 0	312 10 0	
100,000	2,312 10 0	1,385 8 4	1,111 9 2	416 13 4	

The present Commonwealth Revenue from Land Tax is about £2,200,000. A flat rate of 3¾d. in the £ with the present exemption of **£5,000** or a flat rate of 2¾d. in the £ with an exemption of **£3,000,** or a flat rate of 1d. in the £ with *no* exemption, would produce about the same revenue as at present. The estimate of revenue at the rate of 1d. in the £ is based on an aggregate unimproved value of occupied lands in Australia of **£500,000,000.** (See Knibbs' " Private Wealth of Australia, 1915 ".)

The points where the tax reaches £100 at the respective rates are for comparative purposes only; similarly at points A, B, C, comparisons are made where the rates of Columns 3, 4, and 5 intersect those in existence. These comparisons are shown in black type.

660. **In the practical solution of the question raised in this Section of our Report, three positions may arise.**

(1) The Commonwealth and the States may determine to adopt the recommendation we have already made as to the allocation between them of subjects of direct taxation. Under the scheme of " Harmonization " outlined in our Second Report, the States alone would impose Land Taxation, in which event we are of opinion that the tax should be levied at a flat rate. We have already indicated that the States have means other than those open to the Commonwealth by which they can foster closer land settlement within their borders. ***Unless these means prove ineffective, we see no justification for the imposition of progressive rates in Land Tax.***

(2) The Commonwealth may determine to continue the imposition of Land Tax, with the present dual object of raising revenue and the further breaking up of large estates. **In such eventuality, as already indicated** (paragraph 655), **it would be necessary, in our opinion, to adopt a *progressive* scale of rates.**

(3) The Commonwealth may determine to continue the imposition of Land Tax for revenue purposes only, on the ground that no further legislative impetus to the subdivision of large estates by the Commonwealth is necessary. **In this event, it is our opinion that Land Tax should be levied on the basis of a flat rate.**

SECTION XXIII.

TAXATION OF LESSEES' ESTATES IN CROWN LEASEHOLDS.

661. Under the Land Tax Assessment Act, as passed in 1910, Lessees' interests in Crown Leaseholds were not included as taxable interests on land. The amendment of the Act in 1914 brought those interests within the scope of the taxing provisions, and assessments have been issued from year to year since that amendment became operative. The Commissioner of Taxation in his Seventh Annual Report states that the tax has remained outstanding under a verbal direction given by the Right Honorable W. A. Watt, P.C., when Commonwealth Treasurer, pending an investigation by a Royal Commission into the Taxation of Lessees' Estates in Crown Leaseholds. The Commissioner of Taxation has recently (August, 1922) informed us that the Treasurer's direction has not since been varied, and that the amount of tax outstanding in respect of Lessees' interests in Crown Leaseholds is now considerably in excess of £1,000,000. The Royal Commission referred to was appointed in December, 1918, with the following Terms of Reference :—

(a) To inquire into the incidence of that portion of the Commonwealth Law which imposes a tax upon the owners of leasehold estates in Crown Lands;

(b) To report whether such tax has been arranged upon an equitable basis, having regard to the fact that freehold lands are subject to tax as provided by the Commonwealth Law;

(c) To report whether some other method of taxation of leasehold estates in Crown Lands should be adopted, and, if so, what that should be;

(d) To report generally upon such tax and its application.

662. Subject to certain changes in detail, **that Commission** (which consisted of three members) **recommended that in general the taxation of Crown Leaseholds should be continued.** This was the opinion of the majority, one member dissenting on the ground that the taxation of Crown Leaseholds is undesirable, in view of its reaction upon the policy of the States in relation to the occupation of Crown Lands.

663. The present Commission in its First Report (paragraph 178), referring to the matter, whilst stating that there are substantial grounds for not discriminating in taxation between interest in freeholds and interest in leaseholds, postponed fuller discussion of that issue until the question of Land Taxation as a whole could be dealt with. The arguments adduced before the Royal Commission on the Taxation of Crown Leaseholds have been to a large extent repeated, with amplifications and added emphasis during the present inquiry.

664. **Statutory Basis of Land Valuation.**—Under the Commonwealth Land Tax Assessment Act, it is necessary to ascertain the freehold value of lands for the purposes of taxation. That value, when determined, becomes the foundation for computation of the taxable interest (if any) in the leasehold. The best evidence of freehold values is to be found in the records of sales of similar lands, if properly analyzed and due allowance made for forced sale or other special circumstances.

665. It was argued on behalf of Crown Leaseholders that, even after making all allowances for such matters as distance from market, defective means of transit, difficulty or excessive cost of removing stock in time of drought, extra cost of management owing to low carrying capacity of the country, diminution in value of stock due to comparative unsuitability of the land, &c., &c.,

practically impossible to determine freehold value, upon which rests the computation of the taxable interest in a leasehold. Indeed, some witnesses go so far as to say that Crown Leaseholds, apart from the live stock and improvements (if any) upon them, have no definite value at all. This contention appears to have arisen largely out of the practice followed in sales of pastoral leaseholds. Such sales are very commonly upon the "walk-in-walk-out" basis, the price being frequently expressed in a lump sum or in terms of the unit of sheep or cattle upon the holding, the improvements and the value of the lease being included in the lump sum or price per head. In these circumstances, the notion may have arisen in the minds of some pastoralists that these leases have no value capable of being stated in terms of freehold value. This is particularly the case with regard to cattle country, which is frequently held in immense areas on which the improvements effected are of small value, and in the event of a continued drought the owners often abandon the holdings. In some of the States, although the law does not specifically recognise any right to abandon with a consequent cessation of liability, there is a provision (for example, in New South Wales) under which the leases may be surrendered on giving twelve months' notice, and it appears that in other States the practice is not to demand rent after a voluntary surrender.

666. Another reason leading some pastoralists to regard the idea of freehold value as inapplicable to leasehold areas, particularly the more remote areas, is that much of the grazing country held under lease from the Crown would remain unoccupied if occupation were permissible only on terms of purchase.

667. Individual cases were cited in evidence in which it appeared that tax was being assessed upon Crown Leaseholds which, for certain reasons, perhaps of a transitory character, had practically no taxable value. That there is, however, in the aggregate, a large margin between the Crown rents paid and the economic rent, seems sufficiently demonstrable from :—

(1) The established policy of the States to encourage the occupation of State lands by charging low rentals ;

(2) The extent to which Crown lessees sell or sub-lease their leases, for the most part, presumably, with some advantage to themselves ; and

(3) The assessed and outstanding tax upon Lessees' interests in Crown Leaseholds throughout Australia. This amounts to over £1,000,000. This tax is still being assessed in many instances upon the Lessees' own valuations. Even if the Departmental valuations were liberally discounted, the figures would disclose a large aggregate taxable interest.

668. **Effect on State Policy.**—One of the three members of the 1919 Commission on Crown Leaseholds (dissenting from the opinion of the majority) expressed the opinion (as indicated in paragraph 662) that Crown Leaseholds should not be subject to Federal Land Taxation. This opinion was based on the general ground that taxation of such areas tends to react unfavorably upon the State policy of settling the remoter Crown Lands in a permanent manner. The dissenting member, who was the President of the Land Appeal Court, New South Wales, probably had in mind the special circumstances of what is known as the Western Division of that State. A succession of droughts about twenty years ago had led to very heavy losses, and the abandonment of large areas in that portion of the State seemed imminent. Following the report of a Royal Commission, the State Government constituted a statutory body known as the Western Lands Board, which has since administered the Crown Lands within the Western Division. The policy then instituted was, by low rentals, long terms of lease, and a liberalizing of conditions, to encourage the holding and re-stocking of that country.

669. **Separate Aggregation urged.**—One of the principal complaints made both to the 1919 Commission on Crown Leaseholds and to the present Commission was that the aggregation of interest in Crown Leaseholds with other interests in land, freehold or leasehold, causes hardship to landowners and incidentally affects adversely the State policy of settling Crown Lands under a leasehold tenure.

670. On these grounds a number of witnesses urged that for the purpose of land taxation interests in Crown Leaseholds and other interests in land should be separately aggregated, and that the statutory exemption of £5,000 should be allowed in both cases. This view was supported by the Commissioner of Taxation, but, in answer to questions by the present Commission, he stated that his opinion was based, not upon any principle of taxation, but only on the ground that the non-aggregation of Crown Leasehold interests with other interests would probably have some effect in encouraging the settlement of Crown Lands. The evidence given before us by State officials in the two States most interested in this question was to the effect that there is a large demand for the leasehold lands of the Crown, only the most inferior lands being comparatively neglected. In some cases lands come into the hands of the Crown either by resumption in

accordance with the terms of leases, or by abandonment. In such cases, fresh Lessees are often obtainable without much delay, owing to the existence of improvements which the incoming Lessee can secure at a cost much below the replacement cost.

671. **Revenue Effect.**—It was officially stated to this Commission that—

> "The estimated loss of revenue from Land Tax by separately assessing Lessees Estates in Crown Leaseholds from other lands of a taxpayer and allowing in each separate assessment a statutory exemption of £5,000 is £100,000."

672. **Anomalies Created.**—One of the difficulties in the way of the proposal to except Crown Leases from aggregation with other interests is that there are certain cases in which the adoption of such a course would create new anomalies and place neighbouring taxpayers in positions of relative inequity in respect of taxation. For example, immediately adjoining a Crown Leasehold, there may be a private leasehold area of country similar in size and carrying capacity to that of the Crown Leasehold, and it would obviously be an anomaly if the holder of the private leasehold were compelled to aggregate all his holdings, leasehold, and freehold, while the Crown Lessee were allowed to segregate his leases from his other land holdings for the purpose of determining the rate of tax to be paid.

673. The effect of this anomaly would be heightened in cases such as those stated to us by a witness of great experience in connexion with Crown Lands in New South Wales. This witness stated that, on one side of a river which forms part of the boundary of the Western Division, privately-owned lands have a rental value up to about 5s. per sheep-area ; while, on the opposite side of the river, within the Western Lands Division, the maximum rental chargeable under the Statute is 7d. per sheep-area. The Chairman of the Western Lands Board stated that within the Western Division about 1,000,000 acres are of quality similar to the privately-owned lands referred to—that is, are worth approximately 5s. per sheep-area.

674. After careful consideration of the question of the taxation of Lessees' interests in Crown Leaseholds, **we are unable to discover any principle of taxation upon which such interests should be relieved of Land Tax, if other interests in land are taxed.** We are, therefore, of opinion that the question of exempting Lessees' interests in Crown Leaseholds from taxation must be considered wholly from the point of view of policy as between the Commonwealth and the States.

675. **Segregation of Lessees' Interests.—We are also unable to recommend the assessment of Lessees' interests in Crown Leaseholds separately from other interests in land of a taxpayer and the allowance of the statutory exemption in both assessments.** Such a course would, as has been indicated, not only involve a heavy loss of revenue and create new anomalies, but would, in our opinion, be inconsistent with the general scheme of a progressive or graduated tax.

676. We may add in this connection that, in view of the evidence as to the demand for Crown Leaseholds (see paragraph 670), it does not appear that the imposition of the Commonwealth Land Tax upon Lessees' interests in such leases can be regarded as having had any sensibly adverse effect upon the States' policy of settling Crown Lands.

SECTION XXIV.

SHOULD THERE BE DIFFERENTIATION IN TAXATION BETWEEN URBAN AND RURAL LANDS?

677. In the Commonwealth Land Tax Assessment Act no distinction is made between city and country lands. The Act was clearly designed by its framers to discourage large individual aggregations of land. The reasons which may justify the "breaking up" of large country estates can scarcely be said to apply with equal potency in the case of city lands. The question naturally arose in the course of our inquiry as to whether, in the interests of the community as a whole, any good purpose is served by the "breaking up" of valuable city estates.

678. Evidence was submitted to the effect that, under the influence of the present Land Tax, city blocks of high value are being subdivided, with the inevitable result that in many instances, and particularly in the capital cities of the Commonwealth, buildings are being erected on narrow frontages, thus preventing the inclusion of those architectural and other features which should characterize buildings in the main thoroughfares of a modern city.

679. One Witness said :—

"The Act as passed only recognises as an evil large holdings. While it is true that on an average the small owner uses his land more effectively than the large owner, I deny that large holdings are necessarily an evil, and contend that subdivision in the case of valuable city properties is undesirable in the interests of the community and that in the same interests aggregation is desirable.

"From the economic point of view the building on a site consisting of only a narrow frontage is undesirable: too large a percentage of the space is necessarily used for main walls, passages, staircases, lift wells, sanitary conveniences and caretaker's quarters. Within reasonable limits, as to buildings on extremely valuable sites, the larger the site the more economical use will be made of it, the architect will find lighting and ventilation easier, and only such a proportion of floor space will be used for main walls, passages, staircases, lift wells, sanitary conveniences, caretaker's quarters as is reasonable. The public have a vital interest in no discouragement being given to the effective use of city properties; the more economically and effectively they are used the cheaper will the rents of shops and offices in the city tend to be."

680. A similar opinion was expressed by another witness, who in the course of his evidence said :—

"I understand that it has, of course, been regarded as an eminently desirable thing that the city should have fine imposing buildings; yet the tendency now in all the cities is for buildings to be put up on narrow frontages, and of course there is a large amount of space wasted in passages, lift wells, and so on. But that is done to avoid the payment of heavy taxes."

681. However much the tendency referred to by the two witnesses above quoted is attributable to the operation of a progressive Land Tax (and other factors certainly operate), **we do not consider it practicable to differentiate in Commonwealth Land Taxation between city and country lands.**

SECTION XXV.

DEFINITIONS AS TO VALUE.

682. **Improved Value.** The definition in the Commonwealth Land Tax Assessment Act reads :—

"'Improved value,' in relation to land, means the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require."

This definition which, in our opinion, is satisfactory, is practically identical with that of the Statutes of New South Wales, Victoria, and Queensland, although the Victorian Act contains a provision that the land should be regarded as unencumbered by any Lease, Mortgage, or other charge thereon, a condition which seems to be implied in the definition of the Commonwealth and the other two States named. In the Acts of South Australia, Western Australia, and Tasmania, the term is not specifically defined. In Western Australia the terms "Improved land" and "Improvements" are defined. The Western Australian definition of "Improvements" is in the nature of an enumeration of the improvements which are recognised. The Tasmanian definition of "Improvements" is more general in character, and includes improvements effected for the benefit of the land, though outside its boundaries, by the Crown or by any statutory public body, if the owner or occupier has made a direct contribution towards the cost of such improvements. The payment of rates and taxes is not deemed to be a contribution within the meaning of this definition.

683. The New Zealand *Valuation of Land Amendment Act* 1912 also contains a provision similar to that of the Tasmanian Act, which enables cognizance to be taken of improvements effected outside the subject land, if the owner has made a direct contribution towards the cost of the works. The question of including such a provision under the Commonwealth Act is discussed under the heading below, "Unimproved Value," paragraph 684.

684. **Unimproved Value.**—The definition in the Commonwealth Land Tax Assessemnt Act reads :—

"'Unimproved value', in relation to land, means the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require, assuming that the improvements, if any, thereon or appertaining thereto and made or acquired by the owner or his predecessor in title had not been made."

The definitions in the Acts of New South Wales and Queensland are the same as that of the Commonwealth, and there is little difference in effect between the Commonwealth definition and that of the Acts of Victoria, South Australia, and Western Australia, though in those States matter is added, either for the purpose of enumerating the improvements recognised or for other purposes of a local character.

685. It will be seen on reference to the Commonwealth definition that it specifies improvements (if any) upon the taxable land or "appertaining thereto." It is understood that in this form the definition excludes improvements not actually upon the taxable land. The exclusion of such improvements has been represented by a number of witnesses as harsh and unfair. It has been stated, for example, that a land-owner, whether as a contributor to the capital cost of works constructed by the Crown or a public body or otherwise, may expend money in improvements such as drainage, water channels, bore sinking, &c., which, though outside the taxable land, are as important to the working of that land as if situated within its boundaries. The New South Wales *Valuation of Land Act* 1916 contains a provision relating to this matter, which reads as follows :—

"58 (2). For the purposes of this section on ascertaining the unimproved value of any land there shall be a reasonable deduction for profitable expenditure by the owner or occupier on visible and effective improvements (if any) which although not upon the land have been constructed for its drainage, for its protection from inundation, or otherwise for its more beneficial use."

As pointed out in paragraph 683, relating to improvements, the New Zealand Statute, as also that of Tasmania, is wide enough to allow of improvements effected outside the boundaries of the taxable land being taken into account.

In our opinion, it is reasonable that such improvements, when effected either wholly or in part as the result of direct expenditure or contribution of money by the land-owner or his predecessor in title (other than by payment of rates or similar charges) should be treated in the same way as improvements effected upon the land itself.

686. The difficulties which frequently arise in dealing with claims for deduction on account of non-structural improvements effected many years previously, led some witnesses to suggest a sharp limitation of the classes of improvements which should be recognised. For example, the Valuer-General of New South Wales was of opinion that "improvements" for the purposes of Land Tax Assessment should be limited to **improvements, structural or otherwise, effected by the owner** and still in existence, and **effective structural improvements constructed by the owner's predecessor** in title. The effect of this suggestion, if adopted, would be that, apart from improvements effected by the present owner, none but structural improvements would be recognised. It will be seen from paragraph 685 that **we do not endorse the limitation suggested.**

687. **Value of Improvements.**—The definition in the Commonwealth Land Tax Assessment Act reads :—

"'Value of Improvements', in relation to land, means the added value which the improvements give to the land at the date of valuation irrespective of the cost of the improvements: Provided that the added value shall in no case exceed the amount that should reasonably be involved in bringing the unimproved value of the land to its improved value as at the date of assessment."

The Statutes of New South Wales, South Australia, and Western Australia do not define the term "Value of Improvements". The definition in the Queensland Statute is identical with that of the Commonwealth, and the definition in the Victorian Act is similar in effect, but it excepts vineyards, orchards, hop gardens, and lucerne pastures from the proviso that the added value shall in no case be deemed to exceed the cost of such improvements as at the date of assessment. The proviso to the Commonwealth definition has been the subject of criticism, and it has been contended that the Act should be amended by the repeal of that proviso, which was added to the Commonwealth Act in 1912. The Second Annual Report of the Commissioner of Land Tax, referring to the amendment which added the proviso in question, states :—

"This amendment was considered necessary to place the interpretation clause relating to the value of improvements beyond misconception.

"The alteration of the wording of the definition does not in any way vary the principle of the former definition, but it is probable that claims for excessive deductions as a result of improvements will be obviated by more clearly defining the legal position.

"The amendment fixes as the maximum consideration the amount reasonably involved in bringing the land to its improved condition and value as at the date of assessment."

In our opinion, the limitation of added value effected by the proviso is reasonable and necessary.

688. It may be added that in New Zealand a similar limitation formed part of the definition of "Value of improvements" in the Valuation of Land Act until 1912, when it was repealed. The only explanation of that action which has come to our notice is in these terms:—

> "As this definition had the effect of increasing 'unimproved value' at the expense of 'improvements', it was . . . superseded."

This seems rather a statement of necessary effect than of reasons for the change.

689. By a coincidence, it was in the same year (1912) that the Commonwealth definition was amended by adding the proviso which imposes the limitation.

SECTION XXVI.

ESTABLISHMENT OF LAND VALUATION BUREAU.

690. Section 17 of the Commonwealth Land Tax Assessment Act reads:

> "17. (1.) The Commissioner may, if, as and when he thinks fit, make or cause to be made valuations of any land.
>
> "(2.) The Commissioner may obtain and use as valuations, or for the purpose of preparing valuations, any valuations made by or for any State or any authority constituted under a State."

691. Under the present system, the valuation of land for the purpose of Commonwealth Land Tax is effected by a staff of valuers directly supervised in each State by a Chief Valuer, but all ultimately responsible to the Commissioner of Taxation. Many witnesses were of opinion that a separation of the two functions of valuation and assessment is desirable. Two reasons were particularly urged in support of this opinion:—

(1) That "the Departmental interest is in every case to secure the greatest possible amount of revenue", and that the Valuer is therefore continually under the temptation to maintain or increase values beyond what he might otherwise consider reasonable.

(2) That a widespread belief exists that officers charged with the administration of the Taxation Act may interfere with the valuations for the purpose of increasing tax.

692. With regard to (1), certain cases were cited which had been decided in the Courts, and in which valuations made by the Department had been very considerably reduced. These were put forward in support of the argument that valuation should be independent of the administration of the Taxation Acts. On the other hand, one witness gave particulars of eleven New South Wales cases decided in the Supreme Court or the High Court, in which the values contended for by the taxpayers were increased by nearly 50 per cent., the values adopted by the Courts being within about 3 per cent. of the Departmental assessments.

693. As to (2), it was stated in the evidence of the Commissioner of Taxation that such interference does not in fact occur, and that, being charged with the general administration of the Act, he is bound to insure that valuations are carried out in accordance with the indications or express directions of the Act. Representations by taxpayers frequently lead to a reference back to the Valuer for further report upon some point as to which the taxpayer contends that insufficient attention has been given, or that a mistaken view has been taken. Sometimes these are simple questions of fact, *e.g.*, as to whether there are, say, 100 miles of fencing, as shown by the taxpayer, or 80, as shown by the report of the Valuer. More often the issue is one which does not admit of any purely arithmetical solution, but depends upon judgment, experience, and a capacity to determine the weight of evidence. The Commissioner stated that **in no case does he over-ride the final opinion of the official expert,** though it is understood that, within the small limits which are generally recognised as covering the probable margin of error, he may concede something to considerations urged by the taxpayer.

694. **Recommendations of the Crown Leaseholds Commission.**—The Royal Commission on the Taxation of Crown Leaseholds 1919 recommended the establishment of a "Valuing Branch" under the direction of a Valuer-General for the Commonwealth, the Commissioner of Taxation not to—

> "be entitled to vary the valuation or the scheme of valuation, excepting in so far as is necessary to secure conformity with the Law. He should be charged, however, as at present, with this latter responsibility, namely, the securing of conformity with the Law."

It may be remarked that, according to the evidence, the Commissioner limits his control over actual valuations to the securing of conformity with the Law.

695. **Valuation of Improvements.**—Differences of opinion between the taxpayer and the Department on questions of valuation most frequently turn upon estimation of the value of improvements, especially of non-structural improvements. The clearing of land is perhaps the most difficult and the most frequent instance. Such clearing may have been effected many years before the date of inspection and by a predecessor in title of the present owner. It may be impossible to ascertain the cost of the clearing and the necessary attempt to determine the present added value given to the land by that work frequently leads to differences of opinion between the taxpayer and the Department.

696. The New South Wales Valuer-General expressed the opinion that perhaps 90 per cent. of the discussions between the Valuer and the owner would be eliminated if the Act were amended to provide that all non-structural improvements should be left out of consideration. The Land Valuation Act of New South Wales (referred to in the next paragraph) limits the consideration of improvements (*e.g.*, drainage) which may benefit a particular piece of land, but which are **outside** its boundaries, to visible improvements, and the Valuer-General from his experience would desire to go further and limit the deduction made for the purpose of taxation to structural improvements only, except where the non-structural improvements had been effected by the present owner. He instanced the comparatively frequent case of two persons acquiring adjoining portions of land, one of which was originally timbered and the other plain. Assuming the present value of each portion to be the same, say £5 per acre, the owner in one case is allowed a deduction on account of the improvement of clearing, while the other is not, with the consequence that, for land of the same present value and productiveness, two adjoining owners pay different amounts of tax. Many other witnesses, however, were emphatically of the opinion that the exclusion of non-structural improvements would be unjust and would cause much hardship. **We concur in that opinion,** subject to the allowance on account of the improvements being confined to the limits prescribed by the proviso to the definition of "Value of improvements", section 3.

697. **New South Wales Valuation Act.**—In New South Wales an Act called the Valuation of Lands Act was passed in 1916, setting up a Department of Valuation under a Valuer-General, whose duty it is to effect a valuation of all the lands within the State.

698. It may be interpolated here that the State of New South Wales has at present a very small interest in the revenue aspect of land taxation, its Land Tax Assessment Act having been suspended as from the date when, on the passing of the *Local Government Act* 1907, the taxation of lands was handed over to local governing bodies. One exception from this general suspension exists within the Western Lands Division, where there is a small area of freehold still subject to the State Land Tax, from which a tax revenue of about £2,000 per annum is derived.

699. The Valuer-General is charged with the preparation of a Roll showing the unimproved, the improved, and the annual value of the whole of the privately-owned lands in the State, and so much of the Crown Lands as the Valuer-General deems advisable. The Statute provides that the Roll of the Valuer-General shall be the basis for all State and Local Government taxation, for rates collected by such bodies as the Water Supply and Sewerage Board, Fire Brigades Commissioner, &c., and for advances upon mortgage by the State Savings Bank Commissioners. The Act also expressly provides that the valuation on the Roll shall be the basis for compensation in the case of land resumed for any public purpose. The Roll is open for public inspection, and upon payment of a prescribed fee any person may obtain a copy of any valuation. Although the Act was passed in 1916, it was explained in evidence that circumstances arising out of the War had restricted the activities of the new Department, the staff of which, however, is now being gradually augmented. Up to the present, valuations have been completed of practically the whole of the Metropolitan Area and of a few Country Shires.

700. The Valuer-General stated that there is a difficulty in securing thoroughly capable Valuers. Wherever practicable, such Valuers are chosen from men having local experience, and the intention is to retain a Valuer in one district until the valuation is completed, and, if possible, after that date, when the Valuer's work would include all special revaluations and the permanent upkeep of the Roll. Any land-owner may on payment of the prescribed fee obtain a fresh valuation at any time.

701. **Practice in Other States.**—In Victoria about 90 per cent. of alienated land and all unalienated land having water frontage or road frontage has been valued for the purpose of Land Tax. In Queensland, South Australia, and Tasmania valuations have been made for that purpose, and in Western Australia such a valuation is now in progress.

702. **Use of Valuations by Local Authorities.**—In Victoria and Queensland, Land Tax valuations are used to a very small extent by local authorities. In South Australia, twelve out of thirty-four Municipal Corporations have adopted or framed their estimates upon the Land Tax

712. In our opinion, in order to render the valuations of the several State Land Valuation Departments acceptable to the Commonwealth as the basis for Commonwealth Land Taxation, each State Act should embody common definitions of "Improved value," "Unimproved value," and "Value of improvements." To ensure practical uniformity in method, it would also be necessary for each to adopt common rules and formulæ for the guidance of Valuers. **Such united action** on the part of the States, together with suitable agreement between each State and the Commonwealth as to division of cost, **would, in our opinion, not only remove any serious objection to the scheme by the Commonwealth, but would result in greatly diminished cost to both Commonwealth and States, and remove one of the most fruitful sources of friction between taxpayers and the Taxation Departments, both Commonwealth and State.**

713. We do not regard it as essential that any Valuation Bureau whose valuations are to be used for purposes of Commonwealth Land Taxation should be under Commonwealth control, provided that the valuations used are made under common definitions and common rules, and that the Valuers employed are, as they would be, under one responsible control in each State. If the Commonwealth Taxation Department adopts the valuations of the State Departments, it would be desirable that periodical conferences be held between the several Valuers-General and other responsible officers. At such conferences difficulties would be discussed, and common action, where deemed necessary, agreed upon. This should, in our opinion, result in a high degree of uniformity of method throughout the Commonwealth.

713A. Statements made by the Commonwealth Commissioner of Taxation in his Memorandum to the Conference of Taxation Commissoiners, 1917, seem to indicate that he did not foresee serious difficulties in this connection. After discussing the then existing financial difficulties to the States in undertaking valuations for all public purposes, either Commonwealth or State, Mr. Ewing went on :—

> "If the States did this work, and the Commonwealth desired to use the valuations, the Commonwealth and the State Valuers-General in the State could scrutinize the valuations to see that the valuers had done their work in accordance with the law. If the Commonwealth did the work for the State, similar conferences would enable the State to be satisfied that the work had been properly done. Under this scheme the Commonwealth would have a Valuer-General who would see that Commonwealth valuations in all States were kept on the strictest uniform lines. This is done, in a measure, at present by conferences of Commonwealth officials."

714. **We recommend—**

(1) **That each State Parliament pass the necessary legislation constituting a Land Valuation Department or Bureau whose valuations shall be used for purposes of Land Taxation, Probate Duty, and such other purposes as may be prescribed.** (The valuations might also be used for purposes of resumption of land by the Crown, Municipal rating, advances by Savings Banks, and for use by trustees and private persons).

(2) **That in each State Act constituting the State Land Valuation Bureau there shall be embodied common definitions of "Improved value," "Unimproved value," and "Value of improvements"** (see paragraph 712).

(3) **That, in order to ensure uniformity in practice, the several State Valuation Authorities agree upon the adoption of common rules for the guidance of Valuers.**

(4) **That for all public purposes in which land valuation is required, the Commonwealth accept the valuations of the several State Land Valuation Bureaux so constituted.**

715. **In our opinion, these recommendations, if given effect—**

(1) Will meet the widely held and not unreasonable desire for the entire separation of Land Valuation from the administration of Land Tax Statutes.

(2) Will effect by a suitable division of cost between the Commonwealth and various State authorities substantial economy by preventing the present costly duplication.

(3) Will not create a difficulty in the matter of the transfer at any time of Land Taxation from the Commonwealth to the States.

SECTION XXVII.

BOARD OF APPEAL.

716. The evidence submitted on the question of the appointment of a Board of Appeal under the Land Tax Assessemnt Act disclosed as great unanimity of opinion in support of the proposal as that manifested in relation to the establishment of a similar Tribunal under the Income Tax Assessment Act. We are satisfied that the reasons justifying the constitution of the Income Tax Appeal Board are equally cogent with respect to the appointment of a Board of Appeal under the Land Tax Assessment Act.

717. Under Section 44 of the Land Tax Assessment Act a taxpayer may appeal against any assessment by the Commissioner to the High Court, the Supreme Court, or a County or District Court of a State, or such other Court as is specified in that behalf by proclamation, on the ground that he is not liable for the tax or any part thereof, or that the assessment is excessive. There is a natural unwillingness on the part of many taxpayers to incur the delay, trouble, expense and publicity of legal proceedings against the Taxation Department. In the administration of so technical and complex a measure as the Land Tax Assessment Act, many grounds of dispute between the taxpayer and the Department must inevitably arise. **We are of opinion that if taxpayers were given access to an independent Tribunal (having a simple and inexpensive procedure) for the settlement of these disputes, it would do much to allay the existing irritation and discontent on the part of taxpayers.**

718. The following extracts from our First Report in respect of the Board of Appeal under the Income Tax Assessment Act are quoted as being equally appropriate to a Board of Appeal under the Land Tax Assessment Act:—

> "151. The Commission approves of the view generally expressed by witnesses on the subject, that the Board's decisions as to matters of fact should be final."
>
> "152. It is considered that it should be the duty of the Commissioner to forward an objection to his decision to the Board when requested to do so by any dissatisfied taxpayer within 30 days of the receipt by him of such request."
>
> "153. The parties should have the right to appear before the Board in person, or by representative."
>
> "154. With a view to discouraging appeals to the Board on unimportant issues or on frivolous or unreasonable grounds, it is suggested that the appellant should be required to deposit a prescribed fee at the time of lodging an appeal. In the event of the Board considering the appeal frivolous or unreasonable, the Board shall have the power to order the forfeiture of the whole or part of the fee."

719. We are also of opinion that the functions now exercised by the official Board commonly referred to as the Relief Board constituted under Section 66 of the Land Tax Assessment Act should be exercised by the Board of Appeal. For specific recommendation hereon, see section of the Report headed " Relief Board " (page 199).

720. It may be pointed out that, if effect be given to our recommendation that a Land Valuation Bureau be established by each State (see paragraph 707), there is little doubt that each State Act constituting such a Bureau will provide for the creation of a Valuation Court or other Tribunal for the purpose of dealing with appeals against valuations made under the Act, to that extent replacing any Appeal Board appointed under the Land Tax Assessment Act, though appeals on all other matters arising out of assessments would still be within the jurisdiction of the Appeal Board.

721. **We therefore recommend**

(1) That the existing Taxation Appeal Board appointed under the Income Tax Assessment Act and any subsequent or additional Board of Appeal similarly appointed be empowered to hear and adjudicate in matters of appeal under the Land Tax Assessment Act.

(2) That it shall be competent for the Board of Appeal to adjudicate (in respect of Land Taxation) upon matters which involve questions either of law or of fact: that in respect of questions of fact the Board's decision shall be final, but that in respect of questions of law an appeal should lie from the Board to the High Court or to the Supreme Court of a State.

(3) That in those instances in which (prior to the constitution of the Board of Appeal)

(1) notice of appeal to a Court has been given in accordance with Section 44 of the Act, but the case has not come on for hearing;

(2) objection against assessment has been lodged, but no decision has been given by the Commissioner,

the Act should provide that taxpayers shall have the option of transferring their appeal or objection, as the case may be, to the Appeal Board.

SECTION XXVIII.

RELIEF BOARD.

722. In recommending in our First Report the appointment of a Board of Appeal under the Income Tax Assessment Act, we also recommended that the functions now exercised by the official Board, commonly referred to as the Relief Board, constituted under Section 64 of the Act cited, should be exercised by the Board of Appeal. That recommendation was based upon a considerable volume of evidence. A Board consisting of the same members as the Relief Board under the Income Tax Assessment Act, is constituted for the same purposes under a similar section (Section 66) of the Land Tax Assessment Act, and the evidence given in connexion with that Act was even more emphatically in favour of the change recommended in paragraph 162 of our First Report, which reads:—

> "Another function which, in the opinion of the Commission, should be intrusted to the Board is that of deciding the extent of remission of taxation (if any) which should be granted to an applicant under the relief Section 64. That section constitutes, as the Board to deal with such cases, the Commissioner, the Secretary to the Treasury, and the Comptroller-General of Customs. No imputations were made against the fairness and capacity of the existing Board, but there were numerous and strong expressions of a desire on the part of the public that applications under Section 64 should be decided by a Board, the members of which are independent of Commonwealth Departments. Three specific complaints were made against the present arrangement, namely—first, that long delays are too frequent; second, that, from the absorbing nature of their other duties, the public officers now forming the Board under the section cannot afford to give the time requisite to deal promptly and effectively with the cases arising; and, third (this was given great emphasis), that taxpayers have no right of appearance before the Board. As to delays, a number of specific instances were submitted to the Commission, and, although the Department showed in a general reply that these are sometimes due to the taxpayer's failure to supply information promptly, there was clearly a considerable residue of cases in which the taxpayer was not the cause of delay."

723. **We recommend that the Board of Appeal** (see paragraph 721) **be also given the powers now exercised by the Relief Board constituted under Section 66 of the Land Tax Assessment Act.**

SECTION XXIX.

OFFICE ORDERS.

724. In our Third Report, pages 170-1, we drew attention to the fact that the numerous Office Orders relating to the Commonwealth Income Tax Assessment Act had not yet been codified and made available to taxpayers, and we recommended the publication of those Orders for the benefit of the public at the earliest possible moment. The reasons which justify the public issue of the Office Orders in the case of the Commonwealth Income Tax Assessment Act apply with equal force to the publication of Office Orders issued under the Land Tax Assessment Act. A large number of these Orders have been made available to the Commission, and were of considerable assistance to us in our detailed study of the Act. Our examination of them confirms the view expressed by a number of witnesses, that the publication of the Orders would be in the public

interest. Many of the Orders, as supplied to us, contain the names of the taxpayers upon whose cases the Orders were based. These names should, in our opinion, be deleted before publication of the Orders. Our recommendations (paragraph 590, Third Report) in respect of Income Tax Office Orders, appear to us appropriate also in respect of the Orders issued under the Land Tax Assessment Act.

725. **We therefore recommend, in respect of the Orders issued and to be issued under the Land Tax Assessment Act :—**

(1) That the existing body of Office Orders affecting the general practice of the Department be published at the earliest possible moment, and be offered for sale to the public at a moderate cost.

(2) That all such Office Orders subsequently issued be made accessible to taxpayers as soon as issued.

(3) That, with a view to securing wide publicity, the daily press in each capital city be furnished with copies of all such Office Orders as soon as issued.

(4) That all such Office Orders be purchasable at each Commonwealth Taxation Office at a moderate cost.

(5) That facilities be provided free of charge at each Commonwealth Taxation Office for the perusal by taxpayers of all such Office Orders as are operative.

(6) That all such Office Orders be made to apply to all assessments affected thereby relating to the current year of assessment.

(7) That, when the volume of Office Orders is published, a public notification be made that within twelve months from the date of publication (or such further period as the Commissioner may allow) any taxpayer may apply for an alteration of his assessment for any previous year, where the application is based upon an Office Order the contents of which were not available to the taxpayer at the time of the original assessment.

(8) That, to meet cases where a claim for refund of tax would be apparently sustainable under any Office Order which has been cancelled before the publication of the volume of Orders, for twelve months after the publication of that volume, such cancelled Orders shall be available for perusal by taxpayers at the Taxation Office in each capital city, and that during that period taxpayers shall have the same right of application for alteration of their assessment for any previous year arising out of the provisions of any such Order as they would have in respect of published (current) Orders.

SECTION XXX.

COMMENTS ON VARIOUS SECTIONS OF THE COMMONWEALTH LAND TAX ASSESSMENT ACT.

Section 3.—(Definition Section.)

726. **"Absentee."**—The treatment of an absentee less favorably than a resident for the purpose of taxation is a common feature in Taxation Laws. The method of marking the distinction varies in different Statutes—for example, in the New Zealand Land Tax Act 1917, an additional rate of 50 per cent. is imposed upon absentees ; a similar percentage increase is imposed under the Western Australian Act ; in South Australia the additional percentage is 20 per cent. ; in Queensland no specific percentage is added, but, if the unimproved value of an absentee's interest exceeds £300, no exemption is allowed. **The Commonwealth Act,** Section 11, which, in the case of a resident, prescribes an exemption of **£5,000, allows no exemption in the case of an absentee.** Some differences of opinion have been expressed as to the necessity or desirability of taxing absentees' interests in land at a higher rate than those of residents. While there is something to be said in favour of relieving absentees of this additional taxation on the ground that the investment of their capital in Australia is beneficial to the country, **in our opinion, the maintenance of some distinction in taxation between an absentee and a resident is justified** on the general ground that a resident is of greater importance and value to the country than an absentee investor. Whether the differentiation should be effectuated by adding a percentage to the rate of tax, or by reduction or removal of the exemption, or by both, is a question to which we have given consideration, and, **in our opinion, the balance of advantage lies with the method adopted by the Commonwealth Statute.**

727. The tax charged under the Land Tax Act of 1914* on the unimproved value of all the land owned by an absentee is, for so much of the value as does not exceed £5,000 (at which point the taxation of residents begins), at a flat rate of **1d.** per £. Above £5,000 the rate on the first £ is 2·1/18750d., and there is a uniform increase of 1/18750d. on each additional £ of value up to **£80,000,** upon the excess of which a flat rate of **10d.** in the £ is payable.

* The *Amending Land Tax Act* of 1918 imposed an additional Land Tax equal to 20 per centum of the tax payable under the 1914 Act ; but this provision has recently been repealed.

728. The effect of the present exemption in favour of the resident taxpayer is that the absentee pays **1d.** more than the resident taxpayer for every £ of unimproved value.

729. The following table shows the differences in tax between an absentee and a resident at various points of unimproved value :—

Unimproved Value.	Tax Payable.		Increase of Tax Payable by an Absentee as Compared with that Payable by a Resident.	
	By Resident.	By Absentee.	Amount of Increase.	Percentage of Increase.
	£ s. d.	£ s. d.	£ s. d.	
£6,000	4 7 9	29 7 9	25 0 0	573·66
£10,000	26 7 9	68 1 1	41 13 4	158·05
£25,000	172 4 5	276 7 9	104 3 4	60·77
£50,000	637 10 0	845 16 8	208 6 8	32·68
£80,000	1,562 10 0	1,895 16 8	333 6 8	21·33
£100,000	2,312 10 0	2,729 3 4	416 13 4	18·02
£200,000	6,062 10 0	6,895 16 8	833 6 8	13·73

All increases of tax shown in the above table represent 1d. in the £ on the total unimproved value.

730. **Companies not deemed Absentees.** The Act at present provides (Section 39 (4)) that :

> "A company shall in no case be deemed to be an absentee, but any of the shareholders who are absentees shall be separately assessed and liable as absentees."

If our proposal in respect of Companies be adopted, viz., that a Company be deemed the beneficial owner and sole taxable entity in respect of its lands (see paragraph 639) and the present differentiation between resident and absentee taxpayers be maintained, as we suggest it should (see paragraph 726), **we consider that Companies to the extent to which they may be equitably regarded as being absentees should be taxed as such.** If, for example, one-fifth of a Company's shares are held by absentees, then in respect of the same proportion—one-fifth—of the unimproved value of its land the Company should be deemed to be an absentee and be taxed at the absentee rate.

731. In giving effect to our suggestion, no difficulty would arise in the case of a Company all of whose shareholders are either residents or absentees. A Company owning land of an unimproved value of **£80,000,** all of whose shares are held by residents of Australia or a Territory under the authority of the Commonwealth, would pay on **£75,000** (taxable value)—

£75,000 at 5d. (average of progressive rates), £1,562 10s.

A Company owning land of the same unimproved value, all of whose shareholders are absentees, would pay on **£80,000** (no exemption being allowed)—

£5,000 at 1d. (flat rate)	£20 16 8
£75,000 at 6d. (average of progressive rates) ..	1,875 0 0
Total	£1,895 16 8

732. The following examples will illustrate the proposed method of taxation of a Company having both resident and absentee shareholders :—

In "A" Company 50 per cent., in "B" Company 90 per cent., and in "C" Company 20 per cent. of the shares are held by absentees, and each company owns land of the unimproved value of £80,000. The tax may be calculated thus—

	£ s. d.	£ s. d.
"A" Company, if taxed as resident, would pay (as shown above)	1,562 10 0	
50 per cent. of its shares being held by absentees, additional tax would be chargeable on 50 per cent. of the unimproved value of its land, *i.e.*, on £40,000, at 1d. per £1	166 13 4	
		1,729 3 4
"B" Company, if taxed as resident, would pay ..	1,562 10 0	
90 per cent. of its shares being held by absentees, additional tax would be chargeable on 90 per cent. of the unimproved value of its land, *i.e.*, on £72,000, at 1d. per £1	300 0 0	
		1,862 10 0
"C" Company, if taxed as resident, would pay ..	1,562 10 0	
20 per cent. of its shares being held by absentees, additional tax would be chargeable on 20 per cent. of the unimproved value of its land, *i.e.*, on £16,000, at 1d. per £1	66 13 4	
		1,629 3 4

733. **We recommend that, to the extent to which shares in a Company owning land are held by absentee shareholders, as at the 30th June of each financial year, the Company be chargeable with tax at the rate applicable to an absentee.**

734. If for any reason it be found inadvisable to adopt this recommendation, as, for example, because of the cost or difficulty of administration, **we are of opinion that, as an alternative, a Company registered outside Australia should be deemed to be an absentee** and be chargeable with tax at the rate applicable to an absentee.

735. **"Owner."**—If the recommendation made in this Report as to the adoption of "beneficial ownership" as the test of liability to taxation be adopted, the present definition of "owner" will require modification. Some change will probably be necessary also in the definition of the term "joint owners."

736. **"Improved value," "Unimproved value," "Value of improvements."** For comments on the definitions of these terms see "Definitions as to value," page 192.

737. **Secrecy.**—Under the *Income Tax Assessment Act* 1915-18 provision is made for a declaration of secrecy by every officer before entering upon his duties or exercising any power under the Act. Witnesses commented unfavourably upon the absence of any such provision from the Land Tax Assessment Act. In the event of the establishment of independent Valuation Bureaux the value of separate parcels of land would be available for public information. To such disclosure of the official valuation only of separate parcels of land no objection can reasonably be offered; but we consider that stringent precautions should be taken to prevent the leakage from the Taxation Department of information, either as to the aggregate land holdings of a taxpayer or other matters affecting his financial position. Provision should be made for the communication of official information to State Taxation Authorities who are authorized by legislation to reciprocate.

738. **With the exception indicated, it is in our opinion desirable that taxpayers' affairs with regard to Land Tax be treated confidentially,** as in the case of Income Tax, and **we recommend that the Land Tax Assessment Act be amended accordingly.**

739. **Exemption.—Section 11 (2) (b)** reads :—

> "(2.) The taxable value of all the land owned by a person is . . .
>
> (*b*) in the case of an owner not being an absentee—the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of Five thousand pounds."

740. In a case which came before the High Court in 1911 (Bailey *v.* Federal Commissioner of Land Tax, 13 C.L.R., 302) it was held that a taxpayer who owns several parcels of land is not entitled to a deduction of **£5,000** from the value of each parcel, but to one deduction of **£5,000** from the sum of the values of the several parcels. Some witnesses complained of the obscurity of the wording of this Sub-section, and

741. **We recommend that consideration be given to this complaint,** with a view to the substitution of wording likely to be more generally understood by taxpayers.

742. **Amount of Exemption.**—The amount of the exemption specified in this Sub-section, **£5,000,** was referred to by a number of witnesses. Some, while preferring the total abolition of Land Tax, contended that, while land is taxed, there should be no exemption, or that a small exemption only should be allowed, that exemption to be fixed at the point at which it becomes profitable to collect the tax. Others were of opinion that, in case any amendment of the Act for the purpose of maintaining or adding to the revenue from Land Tax be needed, the means to be employed should be the reduction of the present exemption to say **£3,000.** So long as the Commonwealth and States are both imposing Land Tax, a high Commonwealth exemption such as the present is of importance to the States as leaving exclusively to them the considerable percentage of the total unimproved value in each separate ownership which lies below the sum of **£5,000.** We have been unable to ascertain any special reasons for fixing the amount of **£5,000,** except apparently a general idea that it is only when a greater sum than this is represented by one ownership that any national significance attaches to the fact, or that the possession of land up to that amount is regarded as reasonably necessary to insure a living to the owner. On principle, it would seem that, if revenue only be the object of a Land Taxation Act, there is no case for providing any exemption at all, though in a Federation such as that of Australia there may be a case for leaving some part of the taxable field exclusively to the States. On a general view of the question, the Commission has already recommended in its Second Report (paragraphs 249-50), that, subject to certain reciprocal action, the imposition and collection of Land Tax should be wholly a State function.

743. If, however, **no reciprocal arrangement be found practicable at present and** the Commonwealth continues the imposition and collection of Land Tax on a graduated scale of rates, **we are of opinion that the present exemption should be retained** for the reasons :

(1) That to diminish the exemption would reduce that part of the taxable field at present exclusively occupied by the States.

(2) That with a graduated scale of rates the effect of diminishing the exemption would be to shift some of the burden from the large land-owner to the relatively small land-owner.

744. **Section 12** reads : –

" Land Tax shall be charged on land as owned at noon on the thirtieth day of June immediately preceding the financial year in and for which the tax is levied :

" Provided that an owner of the land who, before the thirtieth day of September, One thousand nine hundred and ten, has sold or agreed to sell or conveyed part of the land or has sold or agreed to sell or conveyed all the land to different persons, shall, if the Commissioner is satisfied that the sale agreement or conveyance was *bonâ fide* and not for the purpose of evading the payment of land tax, be separately assessed for the year ending on the thirtieth day of June, One thousand nine hundred and eleven, in respect of the land so sold or agreed to be sold or conveyed to any one person, and be charged with land tax in respect of that land as if it were the only land owned by him."

745. **We recommend** a minor alteration in this Section by substituting the word "midnight" for the word " noon." There seems no special reason why a change of ownership actually occurring at any hour on the 30th June should not be recognised as occurring in the tax year closing on that day. The suggested alteration was recommended by the Conference of Taxation Officers 1917. It would bring the Act into line with the *Queensland Land Tax Assessment Act* 1915, Section 12.

746. The operation of the proviso to Section 12 is exhausted, and the proviso might therefore be repealed.

747. **Section 13.**—This Section enumerates the lands which are wholly exempted from taxation under the Act. We have carefully considered each clause of the Section, and are in general agreement that the Section should be retained. We are of opinion, however, that Sub-clause (*d*), which exempts :—

" all land owned by any building society registered as a building society under any Act or State Act, not being land of which the society has become owner by foreclosure of a mortgage."

lacks justification. We have endeavoured, but without success, to ascertain the reason for the inclusion of land owned by a building society as a subject for exemption from taxation.

748. **We recommend** that Clause (*d*) of Section 13 be repealed.

749. **Section 15,** which deals with the **furnishing of returns by taxpayers,** will need consequential alteration if our recommendation with regard to Section 12, that is, the substitution of the word " midnight " for the word " noon ", be adopted.

750. The Commissioner of Taxation in his Seventh Annual Report points out that the Act does not at present give the Commissioner power to call upon a person who is not a taxpayer to make a return of the land owned by him. Such a power is given in relation to the Income Tax Assessment Act. We agree with the Commissioner's opinion that a provision conferring that power should form part of the Land Tax Assessment Act, and

751. **We recommend** that the Act be amended accordingly.

752. **Section 17.**—This Section deals with valuations, as to which see " Establishment of Land Valuation Bureau," page 194.

753. **Section 20.**—In his Seventh Annual Report, the Commissioner of Taxation pointed out that the Act, while making provision for the **issue of an amended assessment,** makes no provision as to the time within which the increased tax due on the amended assessment is to be paid. The present practice is to allow sixty days for such payment, and

754. **We recommend** that the Act be amended to provide for the payment being made within that period.

755. **Section 21 (1)** reads :—

" 21.—(1.) Where the Commissioner has assessed any person upon the return sent in by him, without making or obtaining any independent valuation, the Commissioner, so soon thereafter as is conveniently practicable, but not after the expiration of two years from the date of the assessment, if from valuations made or obtained by him, or other information in his possession, he finds that the assessment ought to have been for a greater amount, may alter the assessment accordingly, as from the date when the assessment was made."

756. A difficulty in administration has been found to arise under this Sub-section which has been stated to us by the Commissioner of Taxation in the following terms :—

" Whilst the Department has extensive powers to enable it to arrive at proper valuations, it is limited by the law to a period of two years from the date of making an assessment on owners' values, within which the Department may apply an official valuation which would have the effect of causing an owner to pay additional tax.

" This provision operates to cause unnecessary expenditure in administration. For example, if an owner has adhered to his own value in each annual return furnished by him, notwithstanding that the Department has applied an official and higher valuation to the assessment in any year in the interim, and notwithstanding that the land-owner may have tacitly accepted the official valuation, the Department could not apply its official valuation to a later year without depriving itself of the right to further increase the assessed valuation for that later year if evidence of sales indicated a higher value. In such cases the Department must consider, before making an assessment for the later year, whether or not a further examination of the values in the ownership might result in a further increase in the valuation. If an increase is indicated, but not demonstrated at the time, it would be necessary for the Department to make its preliminary assessment for that later year upon the owner's values as declared to in his return, notwithstanding that he has tacitly accepted the former official valuation.

This necessity of the Law produces confusion to both the Department and the taxpayer. There is thus full justification for amendment of Section 21 (1.) of the Land Tax Assessment Act, so as to provide that, if the Department make an original assessment upon its official valuation, which has been explicitly or tacitly accepted by an owner, it should be deemed for the purposes of the Section to have assessed the person under the return sent in by him, without making or obtaining any independent valuation."

The Commissioner has explained to us that the difficulty chiefly arises where several parcels of land, perhaps situated in different States, are included in one return, and the Department has not had an opportunity of making an official valuation of **all** the parcels. In our opinion, the Department should in such cases have a period of two years within which to revise the assessment in respect of those parcels originally assessed on owners' values, and

757. **We recommend** that the Act be amended accordingly.

758. Where the assessment is made wholly on owners' values, the Act now gives the Department two years within which an amended assessment may be issued.

759. Where in respect of any parcels the assessment is based upon an official valuation, no right of re-assessment is required in respect of the year to which the assessment applies, except by way of correction of ascertained errors.

760. **Section 23** reads :—

23.—(1.) The production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

(*a*) be conclusive evidence of the due making of the assessment ; and

(*b*) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment, when it shall be *prima facie* evidence only.

(2.) The production of any document under the hand of the Commissioner, purporting to be a copy of or extract from any return or assessment, shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

761. In his Seventh Annual Report, and in evidence before us, the Commissioner pointed out that :—

" Under the Act as it now stands, it is necessary to produce the assessment made when proceedings are taken for recovery of tax, and any other documents or extracts required to be produced must be certified to by the Commissioner.

It is considered that a copy of a Notice of Assessment certified by either the Commissioner, the Assistant Commissioner, or Deputy Commissioner, and documents or extracts similarly certified would be sufficient. It is also necessary, in order to cut out unnecessary work, delay and expense caused by the present state of the Law.

This will bring the Act into line with the Income Tax Assessment Act."

We concur in the Commissioner's opinion as to this Section, and

762. **We recommend** that the Section be amended to give effect to that view.

763. **Life Tenants.—Section 25** reads :—

"25.—(1.) The owner of any freehold estate less than the fee-simple (other than an estate of freehold arising by virtue of a lease for life under a lease or an agreement for a lease) shall be deemed to be the owner of the fee-simple, to the exclusion of any person entitled in reversion or remainder :

Provided that, for the purpose of the assessment of a legal tenant for life of land, without power to sell, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, the unimproved value of the land shall be calculated upon the basis of the rent which he obtains for the land, or which, if he let the land, he ought reasonably to be able to obtain ; so that the unimproved value of the land shall be taken to be equal to the unimproved value of land owned in fee-simple which would produce the same rent; and for the purpose of this section rent, in the case of improved land, means so much of the whole rent as bears to the whole rent the *portion* which the unimproved value of the land bears to the improved value.

(2.) In this section "tenant for life" includes—

(*a*) a tenant for the life of another ;

(*b*) a tenant for his own or any other life whose estate is liable to cease in any event during that life ;"

764. This Section was the subject of criticism by several witnesses, including the Commissioner of Taxation. Unofficial witnesses contended that the provision of the Section is inequitable seeing that a tenant for life is assessed as if he were the absolute owner. In the first year of the Commonwealth Land Tax, life tenants were taxed upon the basis of capitalization of the rent received (or which should have been received) for the expectation of life of the life tenant. Great administrative difficulties were experienced in connection with this provision, and the only suitable solution appeared to be the amendment of the Act to its present form, which throws the whole responsibility for payment of tax upon the life tenant, to the exclusion of any person entitled in reversion or remainder. The suggestion that this fails in equity is based upon the view that a tenant for life has not the whole interest in the land, and that the interest of, say, a remainder-man may be not only an ascertainable, but also a saleable asset. **For the practical purposes of administration of the Land Tax Assessment Act, however, we consider that the difficulties attaching to any attempt to relieve the tenant for life of his present liability to tax with a view to transferring such liability to the remainder-man or reversioner are so great as to preclude us from recommending any amendment of the Act for that purpose.**

765. The proviso to Section 25 was altered in 1911 by confining it to the assessment of a **legal** tenant for life. This, however, has itself created an anomaly for which there appears to be no justification. The Commissioner of Taxation has put the case to us in these words :—

> "A distinct anomaly exists in the more favorable treatment by the Act of legal life tenants of land without power to sell as compared with equitable life tenants when the interest of the former has arisen under a settlement made before 1st July, 1910, or under the will of a testator who died before that date. Such a legal life tenant is assessed on the capital value of the annual rental of the land for his expectation of life, whilst the equitable life tenant is assessed on the full unimproved value of the land proportionate to his interest. It is submitted that there is no substantial ground for this discrimination."

This statement deals clearly with the point of discrimination between one class of life tenant and another. The broader question of the unequal incidence of the proviso is stated in a memorandum written in 1915 by the then Commissioner of Taxation, Mr. G. A. McKay, and quoted in evidence by the present Commissioner :—

> "The proposed elimination of the proviso which confers the benefit upon legal life tenants is suggested because there is no valid reason for the benefit, particularly as it discriminates between legal and equitable life tenants. Equitable life tenants as a rule have less control over land than legal life tenants, and yet they are assessed on the full unimproved value of the land, whereas legal life tenants are assessable on a lower value than the unimproved value, *i.e.*, on the capital value of the rent of the land for the period of their life. There is no good reason why either legal or equitable life tenants of land should receive preferential treatment over the ordinary owner. There has been very great difficulty experienced in administration in determining whether a life tenant is a legal or equitable life tenant."

The present Commissioner of Taxation, Mr. R. Ewing, informs us that he concurs in the opinion expressed by his predecessor that the proviso to Section 25 should be repealed.

766. **We recommend the repeal of the proviso.**

767. **Section 26** reads :—

"26. The holder of land under a purchase or a right of purchase from the Crown upon conditions, under the laws of a State relating to the alienation or disposition of Crown lands, shall be deemed to be the owner of the land if all the conditions other than the payment of purchase money have been fulfilled, but not otherwise.

768. In the case of Osborne *v.* The Commonwealth (12 C.L.R., 341), Griffith, *C.J.*, said :—

> "Section 26 deals with the holders of land with a right of purchase from the Crown, a form of tenure well known in Australia, and particularly in New South Wales. A person who holds a certificate of fulfilment of the conditions has a marketable title practically equivalent to a grant in fee, subject to payment of the balance of the purchase money. He is substantially the owner, and Section 26 says that he is to be deemed to be the owner for the purpose of the Act, just as is a mortgagor."

769. It may be observed that the great majority of holders of lands under the tenures dealt with by Section 26 hold less than £5,000 of unimproved values, and consequently would not be taxable. Where, however, the holders would otherwise be taxpayers the Section affords provisional exemption in respect of such lands until the holders reach the position in which they are entitled to a Crown Grant on payment of the balance of the purchase money.

770. The provisional exemption thus allowed may have been based on two grounds—First, that it avoids interference with the settlement policy of the States, and second, that as a matter of practice it would be difficult or impossible to determine the amount of the holder's interest in the land, while there are unfulfilled conditions of residence and improvement.

771. The existence of the Section in its present form is not, in our opinion, inconsistent with the basis of beneficial ownership, which we recommend.

772. **Section 27** reads :—

"27.—(1.) The owner of a leasehold estate in land, under a lease made or agreed to be made after the commencement of this Act, not being a lease made in pursuance of an agreement made before the commencement of this Act, shall be deemed (though not to the exclusion of the liability of any other person) to be the owner of land of an unimproved value equal to the unimproved value of his estate :

Provided that where the owner of a leasehold estate has, within five years previously, been the owner of a freehold estate in the land he shall be assessed and liable to land tax as if he were the owner of the fee-simple.

(2.) He shall be entitled to deduct from the tax payable by him in respect of the unimproved value of his estate an amount equal to the sum of—

(*a*) the amount which bears the same proportion to the tax payable in respect of the land by the owner of any freehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the land, and

(*b*) the amount which bears the same proportion to the tax payable in respect of the unimproved value of any precedent leasehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the precedent leasehold estate.

(3.) Notwithstanding anything in this section, where the owner of the fee simple is exempt under section thirteen or forty-one of this Act from taxation in respect of the land, or the lease is a lease from the Crown, a lessee of the land shall be assessed and liable for land tax as if the lease were made before the commencement of this Act and not otherwise.

(4.) For the purposes of this section—

(*a*) the unimproved value of a leasehold estate means the present value of the annual value of the land calculated for the unexpired period of the lease at four and a half per centum, according to calculations based on the prescribed tables for the calculation of values ;

(*b*) the annual value of land means four and a half per centum of the unimproved value of the land :

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based ; and

(*c*) the owner of a leasehold estate includes the lessee of land for life under a lease or agreement for a lease."

773. This Section, which deals with leases entered into **after** the commencement of the Act, has been the subject of much criticism during our inquiry. It has specially been contrasted unfavorably with Section 28, dealing with leases made **before** the commencement of the Act, as the lessee coming under Section 27 is taxed at a higher rate than he would be if the lease had come under Section 28, and there is also the anomalous position that the rebate of tax allowable to the lessee on account of the tax payable by the lessor is dependent upon whether the lessor is not taxable, or, if he is taxable, upon the rate of the lessor's tax. The first point, that is, the difference in tax to a lessee according to whether he comes under Section 27 or Section 28, was illustrated to us by a witness thus :—

	Section 27.		Section 28.
Unimproved value of land leased	£10,000	..	£10,000
4½ per cent.	450	..	450
Rent reserved, £300 (not allowed as a deduction under Section 27)	..	..	300
	£450	Difference	£150

Unexpired term of lease, 5 years.
Multiplier, as per prescribed table, 4·488.
Lessee's estate, Section 27—£450 × 4·488 = £2,019.
Lessee's estate, Section 28—£150 × 4·488 = £673.
If the rent reserved under the lease in above cases had been **£450,** the Lessee's estate under Section 27 would still be **£2,019,** but under Section 28 it would be nil.

In our opinion the method of valuation of a lessees' interest embodied in Section 28 **is the** only one consistent with sound principle and **we recommend its adoption to the exclusion of the arbitrary method of Section 27.**

774. With regard to the second point, the Commissioner of Taxation supplied us with some illustrations of the anomaly that the tax of the lessee under Section 27 is relatively great or small according as the lessor's rate of tax is greater or less than the lessee's rate of tax. The Commissioner expressed the opinion that an amendment of the Act, which would remove this anomaly, would expose the revenue to loss, owing to the opportunity it would give for avoidance of tax by entering into fictitious leases. **We are of opinion that the present anomaly should be removed.** This removal would follow the adoption of beneficial ownership as the sole measure of liability to taxation.

775. **Proviso to Section 27 (1.)** (para. 772).—It can hardly be contended that this proviso bears the impress of equity, since it strikes at transactions entered into in good faith and for valid reasons equally with those the sole purpose of which is avoidance of tax, and which may be subject to some secret arrangement the effect of which would be to leave the control of the whole estate in a transferror, as if he had never executed the transfer. In a manner which, though simple for the purpose of administration, is perfectly arbitrary, the proviso places liability for Land Tax as owner upon a person who may for years have ceased to be an owner for every purpose, legal and beneficial. A case which arose under the Commonwealth Income Tax Assessment Act, and which deals with the principle underlying this part of Section 27 of the Land Tax Assessment Act (Deputy Federal Commissioner of Taxation, Appellant, and Thomas Purcell, Respondent, 29 C.L.R., 464), may be referred to. In that case, the owner of certain pastoral properties executed a Declaration of Trust in favour of himself, his wife and his daughter, apportioning the income of the properties in equal shares between the three persons named. It was claimed by the Commissioner of Taxation that the Declaration of Trust was invalid as against the claim for Income Tax. In the course of judgments in the case, the judgment of Griffith, *C.J.*, in Waterhouse *v.* Deputy Federal Commissioner of Land Tax (17 C.L.R., 665) was quoted thus :—

> "It is hardly necessary to point out that a *bonâ fide* alienation of land for the purpose of escaping liability to taxation incident to its ownership is not an evasion of Land Tax."

In the joint judgment of Gavan Duffy and Starke, *J.J.*, it was stated :—

> "The Commissioner insisted that the declaration, if in form it created a trust, was in fact a mere sham—a device whereby property belonging to the settlor is made to appear to belong in equity to some one else in order to escape taxation. Undoubtedly, if the Commissioner could establish this position, the respondent would be assessable as the absolute owner pursuant to Section 10 of the Act, and not merely as a trustee. The question is one of fact. The Chief Justice found that the declaration was not a sham, and that the respondent did in fact intend by the document to benefit his wife and daughter, although he had present in his mind, and was to some extent influenced by the fact, that the disposition would reduce the burden of taxation. The learned counsel for the Commissioner stressed this latter part of the finding, but the right of every man to dispose of his property, if he can, in a way which will relieve him of taxation, and for that purpose, has been recognised by the highest authority (Simms *v.* Registrar of Probates (1900), A.C. 333). . . . The Commissioner next contended that, even if the declaration evidenced a real, genuine, and valid transaction, yet it was struck by Section 53 of the *Income Tax Assessment Act* 1915–16.* If the argument be sound, the assessment is of course unimpeachable. It is therefore essential to consider the true construction of Section 53. The Section, as the Chief Justice says, does not prohibit the disposition of property. Its office is to avoid contracts, &c., which place the incidence of the tax or the burden of tax upon some person or body other than the person or body contemplated by the Act. If a person actually disposed of income-producing property to another so as to reduce the burden of taxation, the Act contemplates that the new owner should pay the tax. The incidence of the tax and the burden of the tax fall precisely as the Act intends, namely, upon the new owner. But any agreement which directly or indirectly throws the burden of the tax upon a person who is not liable to pay it, is within the ambit of Section 53. It follows, from what we have said, that there is no contravention of Section 53 in the present case."

---

* Section 53 (Income Tax Assessment Act).—"Every contract, agreement or arrangement made or entered into, in writing or verbal, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

(*a*) altering the incidence of any income tax ; or
(*b*) relieving any person from liability to pay any income tax or make any return ; or
(*c*) defeating, evading or avoiding any duty or liability imposed on any person by this Act ; or
(*d*) preventing the operation of this Act in any respect ;

be absolutely void, but without prejudice to its validity in any other respect or for any other purpose."

The case of Simms *v.* Registrar of Probates was a decision of the Privy Council upon an appeal from the Supreme Court of South Australia. In the course of the judgment of the Privy Council it was said :—

> "It does not appear to their Lordships that an examination of the decisions in which the word "evade" has been the subject of comment leads to any tangible result. Everybody agrees that the word is capable of being used in two senses : one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable. . . If the thing which constitutes evasion is some contrivance between two or more persons, that is a substantial subject of inquiry with easily-defined limits. The question whether an apparent transfer is also a real one is a question which occurs not very rarely, and on which the evidence of actual dealings by the parties can usually be brought to bear. But if we are to dive into the motives of a person acting by himself, and to find out whether a desire to avoid a tax, which probably everybody thinks desirable *per se*, was when he gave away property, a dominant motive with him, or a substantial motive, or a minor motive, or any motive at all, that is an inquiry of a vague and indefinite kind."

776. It has been suggested that an equitable amendment of the proviso under discussion would be to add such words as :—

> "unless the Commissioner is satisfied that the transaction was not effected primarily for the purpose of avoiding Land Tax."

but for the reasons just quoted from the judgment of the Privy Council, we are of opinion that the inquiry that the Commissioner would be compelled to make in such a case would be what the Privy Council calls "an inquiry of a vague and indefinite kind," and one which is hardly likely to be satisfactory. In our opinion it would be better to leave the question to be decided by proof that the transfer is in effect a real one, independently of whether the motive or one of the motives for the transfer is avoidance of tax. In cases of the kind there is always a degree of protection to the revenue afforded by the "general reluctance of mankind to part with their property to others," and, **in our opinion, subject to inquiry, where deemed necessary, into the reality of the transaction, there should be no attempt to assess a person to Land Tax (as in the proviso) as if he were the owner of the fee-simple in cases where he has actually divested himself of his ownership —that is, the principle of beneficial ownership should have full sway and the Revenue authorities should be satisfied with inquiries, where considered necessary, into the reality of transfers of property, without attempting to make liability to tax depend upon difficult and unsatisfactory inquiries into motive.**

777. An ambiguity in the proviso to Section 27 (1.) has been pointed out by the Commissioner of Taxation in his Seventh Annual Report. If the opinion just enunciated with regard to this proviso be given effect, there would be no need for action with regard to that ambiguity. The Commissioner points out that the expression in the proviso "five years previously" may mean either five years previous to the date of assessment or five years previous to the date of the lease, and suggests that the word "previously" in the proviso be omitted and that there be inserted the words "previous to the date when he became lessee of the land."

778. **If the proviso is to be retained, the amendments suggested by the Commissioner to remedy the ambiguity should in our opinion be enacted,** except that the period of five years should be shortened to three years.

779. While we have discussed this section at some length, **we must point out that the adoption of the scheme we recommend, that is, to base taxation solely upon the possession of a beneficial interest in land, would remove the necessity for the section.**

780. **Section 28** reads :—

"28.—(1.) The owner of a freehold estate in land who or whose predecessor in title has before the commencement of this Act entered into an agreement to make or granted a lease of the land shall, for the purpose of his assessment under this Act, be entitled, during the currency of the lease, to have the unimproved value (if any) of the lease deducted from the unimproved value of the land.

(2.) The owner of a leasehold estate in land, under a lease made or agreed to be made before the commencement of this Act, shall be deemed to be, in respect of the land, the owner of land of an unimproved value equal to the unimproved value (if any) of his estate ; but if he has, before the commencement of this Act, entered into an agreement to make or granted a lease of the land, he shall be entitled, during the currency of that lease, to have the unimproved value (if any) of that lease deducted from the unimproved value of his estate :

Provided that where the owner of the leasehold estate has, within three years before the commencement of this Act, been the owner of a freehold estate in the land, he shall be assessed and liable to land tax as if his leasehold estate had been under a lease made after the commencement of this Act.

(3.) For the purposes of this section—

(*a*) the unimproved value of a lease or leasehold estate in land means the value of the amount (if any) by which four and a half per centum of the unimproved value of land exceeds the annual rent reserved by the lease, calculated for the unexpired period of the lease at four and a half per centum, according to the calculations based on the prescribed tables for the calculation of values:

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based:

(*b*) rent, in the case of a lease of improved land, means so much of the whole rent as bears to the whole rent the proportion which the unimproved value of the land at the date of the lease bore to the improved value:

Provided that, where onerous conditions for constructing buildings, works, or other improvements upon the land, or expending money thereon, are imposed upon the lessee, or where any fine, premium, or fore-gift, or consideration in the nature of fine, premium, or fore-gift, is payable by the lessee, the Commissioner may assess the amount (if any) which ought, for the purposes of this section, to be added to the value of the rent in respect thereof, and the value of the rent shall be deemed to be increased by that amount accordingly;

(*c*) the owner of a leasehold estate includes the lessee of land for life under a lease or an agreement for a lease."

781. The proviso to sub-section (2.) is in our opinion objectionable and should be eliminated. Where it operates it measures the unimproved value of a lessee's estate by an arbitrary method which, as indicated in paragraph 773, should in our opinion be removed from the Act.

782. The general scheme of Section 28 is not inconsistent with the principle of beneficial ownership, which we recommend as the basis of taxation. The principal criticism of the Section by witnesses turned upon the question of "onerous conditions" in the proviso to Sub-section (3.) (*b*). In a case arising under this sub-section, it was held by the High Court that:—

> "A covenant in a lease of Crown land for mining purposes requiring the lessees during the term of the lease to employ in the construction of works or in mining operations on or under the land a number of able and competent workmen and miners, was an onerous condition for expending money upon the land." (The Coal Cliff Collieries Ltd. *v.* Federal Commissioner of Land Tax (1917) 24 C.L.R., 197.)

The Commissioner of Taxation informed us that insuperable difficulties were encountered in the attempt to compute the amount of deduction on account of the "onerous conditions" in this case, with the result that no deduction could be made. It has been suggested that "onerous conditions," for the purposes of the sub-section, should be defined as including all those conditions of a lease which involve any limitation in the use of the land by the lessee; but, **in our opinion, the term "onerous conditions" in Section 28 should be confined to obligations to do something by way of an improvement of the leased property,** which—

(1) will enure to the benefit of the landlord; or
(2) may be reasonably regarded as a substitute for rent, or may be reasonably converted into terms of rent; or
(3) will involve an expenditure on the part of the lessee, the effect of which will be to maintain or increase the capital improved value of the land.

We recommend amendment of the Act to secure that result.

783. We do not consider it inconsistent with that recommendation that rates and taxes attached by law to the ownership or possession of land and paid by the Lessee in relief of the Lessor and in accordance with a covenant in the Lease should be regarded as equivalent to rent and therefore, like rent, to be taken into account in fixing the unimproved value of the Lessee's interest. No deduction is at present allowed on this account, but

784. **We recommend** an amendment of the Act to allow such a deduction.

785. In Section 28, as in Section 27, 4½ per cent. of the unimproved value is the percentage prescribed for the purpose of determining the economic rent. Under Section 28 the **taxable interest** of a Lessee is the amount, if any, by which 4½ per centum of the unimproved value of the leased lands exceeds the annual rent reserved by the Lease. This amount is capitalized for the unexpired period of the Lease at 4½ per cent. It was contended by witnesses appearing before the Crown Leases Commission, and also before the present Commission, that to adopt 4½ per cent. as the factor of capitalization in this case puts the taxpayer at a disadvantage and is inconsistent with the facts of the average primary producer's position. It was stated that a Crown Leaseholder, for example, is entitled to expect a return of not less than 10 per cent. (some witnesses put the percentage much higher). The Commissioner of Taxation, in his evidence before the Crown Leases Commission, expressed the opinion that the rate for capitalization should be about 5½ per cent. but not exceeding 8 per cent. The effect of increasing the percentage used as the factor of capitalization is to decrease the taxable interest of the Lessee and consequently the Lessee's tax. The Crown Leases Commission, being of opinion that the 4½ per cent. basis is "inequitable," recommended that a basis of about 8 per cent. should be used.

786. The question can only arise when the rent payable by a Lessee is less than the economic rent. In that case the position is that the total estate or interest in the land is divided between the Lessor and the Lessee. It seems to us, therefore, that when the proportions of the total interest in the land respectively vested in the two parties and expressed in terms of rent are to be converted into their capital-value equivalents the same percentage-factor of capitalization should be used in each case; otherwise the treatment of the matter will be determined by the introduction into the calculation of an inappropriate element, namely, that of tax-concession to the Lessee. The desire to make a tax-concession to the Lessee is intelligible, but it appears to us illogical to attempt to effect this result by applying different rates of capitalization to the two parts into which the total economic rent of a piece of land happens to be divided.

787. There are two further objections:—First, that if the Lessee's interest is to be capitalized according to the rate of the net profit which the Lessee expects to make as a result of carrying on business upon the land (and this is the basis put forward by the advocates of this course) the standard is varying and uncertain; second, that the course proposed would give a tax-concession to the Lessee at the direct expense of the Lessor (where the Lessor is taxable); but this, we suggest, is contrary to sound principle. Exemptions and deductions from tax are legitimately made only at the expense of the whole body of taxpayers. By the course proposed, one person, the Lessee, would, improperly as we think, have his tax decreased at the direct expense of another person, the Lessor. It may be said that it is in respect of Crown Leases where the Lessor (the State) is exempt from tax that the proposal is made. That is true, but the method seems more manifestly inappropriate as a means of giving a tax-concession if it is proposed to be made only where there is a taxable Lessee but no taxable Lessor.

788. We have carefully considered all that has been advanced on this subject, and are unable to see any valid reason for recommending a factor of capitalization differing from the factor used as the percentage of unimproved value adopted for the purpose of determining the "economic rent." At present this is 4½ per cent. The evident intention is that the prescribed percentage shall have a close relation to the average return derivable from sound investments. **We do not recommend any change in that rate, for the reason that we have not received any evidence pointing definitely to the need for such a change and supplying us with reasons for adopting some other specific rate.** We consider, however, that any change in that percentage might reasonably be made from time to time upon the recommendation of the financial advisers of the Commonwealth.

789. **Section 29.**—This section as amended in 1914 contains the provisions under which the taxation of Lessees' interests in Crown Leaseholds is authorized. (For discussion upon that subject, see "Taxation of Lessees' Estates in Crown Leaseholds," page 189).

790. **Sections 31 and 32.**—These sections provide in effect that a Mortgagor shall be the taxpayer in respect of the land represented by the Mortgage, the Mortgagee only incurring liability for tax when in possession of the mortgaged land, and even then the Mortgagor is deemed to be the primary taxpayer, and the Mortgagee in possession the secondary taxpayer. The Mortgagee in possession is not liable for tax if his possession began before 1st July, 1910, nor in any case until a period of three years after he has entered into possession, except where the Mortgagor fails to pay the tax during that period, in which event payment by the Mortgagee is required, but that payment is deemed to be made by him on behalf of the Mortgagor. **Under the scheme we recommend of taxing beneficial interests in land, in our opinion, the mortgagor should, while his possession is uninterfered with, be regarded as the sole taxpayer. If, on the other hand, a Mortgagee enters into possession, he should, in our opinion, from the day upon which he takes possession, be deemed to be the sole taxpayer.**

791. **We recommend** amendment of the Act in accordance with that opinion.

792. **Section 33** reads:—

33.—(1.) Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land:

Provided that where he is the owner of different lands in severalty, in trust for different beneficial owners who are not for any reason liable to be jointly assessed, the tax so payable by him shall be separately assessed in respect of each of those lands:

Provided also that when a trustee is also the beneficial owner of other land, he shall be separately assessed for that land, and for the land of which he is a trustee, unless for any reason he is liable to be jointly assessed independently of this section.

* * * * * * * *

(2.) A trustee shall in no case be deemed to be an absentee; but any of the beneficiaries who are absentees shall be separately assessed and liable as absentees.

This section will need amendment if the beneficial ownership basis for taxation be adopted, as recommended. In that case a trustee, who as such is now made liable to Land Tax as if he were beneficially entitled to the land, would be wholly relieved of that liability. If, however, a trustee were also a beneficiary, he would be liable as beneficiary to the extent of his beneficial interest, but not as trustee.

793. **Section 35.**—This section provides that the owner of an equitable estate or interest in land shall be assessed and liable in respect of Land Tax as if he were the legal owner of the estate or interest. A further provision is that, where there is an equitable interest, the owner of the legal estate shall be deemed to be the primary taxpayer and the owner of the equitable estate the secondary taxpayer. **This section will need amendment or may become unnecessary** if our recommendations with regard to the beneficial ownership basis of taxation (see paragraph 638) and with regard to Section 25 (see paragraphs 763–766) be adopted.

794. **Section 36** reads :—

36. (1.) Land owned by a married woman for her sole and separate use shall be liable to assessment and taxation as if she were unmarried.

(2.) Where—

(*a*) a husband has directly or indirectly transferred land to or in trust for his wife, or

(*b*) a wife has directly or indirectly transferred land to or in trust for her husband,

(they not being judicially separated), the husband and wife shall, unless the Commissioner is satisfied that the transfer was not for the purpose of evading land tax, be deemed to be joint owners of all the land owned by either of them :

Provided that this sub-section shall not apply to settlements made before the thirtieth day of September, One thousand nine hundred and ten.

Sub-section (2.) of this section was declared by the High Court to be invalid—Waterhouse *v.* Deputy Federal Commissioner of Land Tax (South Australia (1914) 17 C.L.R. 665).

795. **In view of that decision, the sub-section should be repealed.**

796. **Section 37** reads :—

37.—(1.) Where, before or after the commencement of this Act, an agreement has been made for the sale of land, whether the agreement has been completed by conveyance or not—

(*a*) the buyer shall be deemed to be the owner of the land (though not to the exclusion of the liability of any other person) so soon as he has obtained possession of the land ; and

(*b*) the seller shall be deemed to remain the owner of the land (though not to the exclusion of the liability of any other person) until possession of the land has been delivered to the purchaser and at least fifteen per centum of the purchase money has been paid :

Provided that the Commissioner may exempt the seller from the provisions of this section, if he is satisfied that the agreement for sale has been made in good faith, and not for the purpose of evading the payment of land tax, and that the agreement is still in force ; as to all which matters the decision of the Commissioner shall be final and conclusive.

(2.) In estimating the amount of purchase money which has been paid, all money—

(*a*) owing by the purchaser to the seller, and secured by any mortgage or charge on the land ; or

(*b*) lent to the purchaser by the seller ; or

(*c*) owing by the purchaser to any other person, and directly or indirectly guaranteed by the seller,

shall be deemed to be unpaid purchase money.

(3.) When by virtue of this section the buyer and seller of any land are both liable for land tax in respect thereof the buyer shall be deemed to be the primary taxpayer, and the seller to be the secondary taxpayer ; and there shall be deducted from the tax payable by the seller in respect of the land such amount (if any) as is necessary to prevent double taxation.

797. During our inquiry this section has been criticised by witnesses as unnecessarily continuing for an undefined time the concurrent tax-liability of two persons, namely, the buyer and the seller, where an agreement has been made for the sale of land. It will be seen that, while the buyer is deemed to be the primary taxpayer, the seller is for taxation purposes deemed to remain the owner of the land (and secondary taxpayer) until possession has been given to the purchaser and at least 15 per cent. of the purchase money has been paid. The Commissioner is given discretion to exempt the seller from the provisions of the section under specified conditions, and his decision in the matter is made final and conclusive. It was urged upon the Commission that the delivery of possession by the seller should, as under the Queensland Act, be accepted as a sufficient test of the transfer of liability to taxation. It is stated that many transactions occur in which possession is given to the purchaser, although either no payment on account of the purchase money has been made, or, as in the more common case, a proportion of the purchase money less than the 15 per cent. prescribed by the Act has been paid.

798. **We recommend that the section be amended** to provide that where—

(1) possession of the land has been delivered to the purchaser, with the right to receive the rents and profits, and

(2) not less than 10 per cent. of the purchase money has been paid,

the purchaser should be treated as the owner, and the seller's liability to taxation should be deemed to have terminated.

799. In cases where the Commissioner declines to accept the contention of either of the parties that these conditions have been fulfilled, **we recommend** that the party aggrieved by such decision be entitled to appeal to the Board of Appeal (see paragraph 721). The evidence shows

the practice of the Department to be to release the seller from liability to tax if the buyer has obtained possession of the land and has paid some part of the purchase money, though it be less than 15 per cent. The Act apparently admits of the exercise of the discretion of the Commissioner in such a way as (in a proper case) to relieve the seller from liability to tax, even though no part of the purchase money had been paid. To meet exceptional cases, the provision conferring such discretion should in our opinion be retained.

800. Sub-section (3.) of the above section should disappear if our recommendation with regard to the beneficial ownership basis be adopted.

801. **Section 38** reads—

38.—(1.) Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section.

(2.) Joint owners (except those of them whose interests are exempt from taxation under section thirteen or section forty-one of this Act) shall be jointly assessed and liable in respect of the land (exclusive of the interest of any joint owner so exempt) as if it were owned by a single person, without regard to their respective interests therein or to any deductions to which any of them may be entitled under this Act, and without taking into account any land owned by any one of them in severalty or as joint owner with any other person.

(3.) Each joint owner of land shall in addition be separately assessed and liable in respect of—

(*a*) his individual interest in the land (as if he were the owner of a part of the land in proportion to his interest), together with

(*b*) any other land owned by him in severalty, and

(*c*) his individual interests in any other land.

(4.) The joint owners in respect of their joint assessment shall be deemed to be the primary taxpayer, and each joint owner in respect of his separate assessment to be a secondary taxpayer ; and from the tax payable in respect of his interest in the land, by each joint owner under the last preceding sub-section, there shall be deducted such amount (if any) as is necessary to prevent double taxation.

(5.) Joint owners shall in no case be deemed in respect of their joint assessment to be absentees ; but any of them who is an absentee shall be separately assessed and liable, under this section, as an absentee.

(6.) This section shall not apply in the case of joint owners who have made partition of their interests since the thirtieth day of June, One thousand nine hundred and ten, and before the thirtieth day of September, One thousand nine hundred and ten.

(7.) Where, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, the beneficial interest in any land or in the income therefrom is for the time being shared among a number of persons, all of whom are relatives of the settlor or testator by blood, marriage, or adoption, in such a way that they are taxable as joint owners under this Act, then, for the purpose of their joint assessment as such joint owners, there may be deducted from the unimproved value of the land, instead of the sum of Five thousand pounds as provided by paragraph (*b*) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely :—

In respect of each of the joint owners who hold an original share in the land under the settlement or will—

(*a*) the sum of Five thousand pounds, or

(*b*) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under section thirty-four of this Act, as the share bears to the whole,

whichever is the less :

Provided that, where the same persons have a beneficial interest in land or in the income therefrom under more than one settlement or will or under a settlement and will, they shall be jointly assessed in respect of the whole of their interests under the settlements or wills or settlement and will, and there may be deducted in the joint assessment from the unimproved value of the land comprised in the joint assessment, instead of the sum of Five thousand pounds as provided by paragraph (*b*) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely :—

In respect of each of the joint owners who holds an original share in the land being jointly assessed—

(*a*) the total sum of Five thousand pounds, or

(*b*) the sum which bears the same proportion to the unimproved value of the land after deducting the value of any annuity under section thirty-four of this Act as the share bears to the whole,

whichever is the less.

(8.) In this section, " original share in the land " means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder in the land or the income therefrom, or to the first such interest in remainder after a life interest of the settlor or after a life interest of the wife or husband of the settlor or testator.

802. The term " joint owners " used in this section is defined thus by Section 3 :—

" Joint owners " means persons who own land jointly or in common, whether as partners or otherwise, and includes persons who have a life or greater interest in shares of the income from the land."

Perhaps the most numerous and important group of persons whose interests are governed by this section is that of shareholders in Companies. This long and complicated section, which has been the subject of much litigation, will practically disappear from the Act if our recommendation with regard to beneficial ownership as the basis for taxation be adopted. In the case of joint owners in the strict sense, that is, persons who have an undivided interest in land and are not tenants in common, **in our opinion the interest of each joint owner for the purpose of the Land Tax should be ascertained by dividing the total unimproved value of the land by the number of joint owners.**

803. Sub-section 7 of this section places joint beneficial owners in trust estates where the interest arose prior to the inception of the Act, 1st July, 1910, in an advantageous position in regard to the tax as compared with other joint owners. The Commissioner of Taxation informed us that—

> "It is understood that the provision was inserted because it was contended that joint beneficial owners under trust deeds could not sell the land and thus assist in breaking up big estates. There is, however, a way by which beneficial owners can obtain power to sell (consent of Court), so that no real reason exists for the discrimination between joint beneficial owners in trust estates and ordinary joint owners."

In our opinion, this discrimination cannot be fully justified, and we recommend the repeal of Sub-section 7.

804. **Section 38A** confers upon a specified class of persons a somewhat similar privilege to that conferred by Section 38 (7.). **In our opinion, this discrimination also cannot be fully justified, and we recommend the repeal of the section.**

805. With regard to recommendations for the repeal of Section 38 (7.) and Section 38A, it should be pointed out that if our recommendation (paragraph 638) of beneficial ownership as the sole test of tax-liability be adopted, the net combined effect of the recommendations will be not to diminish any exemption which can now be claimed under Section 38 (7.) or Section 38A, but, where the amount claimable under those sections is less than **£5,000**, to allow that sum to be claimed. It is important to note that what is now a privilege granted to restricted classes of joint owners would then become the right of all joint owners.

806. **Section 39** reads—

39.—(1.) All land owned by a company shall be deemed (though not to the exclusion of the liability of the company or of any other persons) to be owned by the shareholders of the company as joint owners, in the proportions of their interests in the paid-up capital of the company.

(2.) The provisions of section thirty-eight of this Act shall apply accordingly (but so that the assessment and liability of the company shall be in lieu of the joint assessment and liability under sub-section (2.) of that section), and the shareholders shall be separately assessed and liable, and entitled to deductions, in accordance with that section.

(3.) The term "shareholder," in this and the next following section includes all persons on whose behalf a share in the company is held by a trustee or by any other person.

(4.) A company shall in no case be deemed to be an absentee; but any of the shareholders who are absentees shall be separately assessed and liable as absentees.

(5.) A company shall be deemed to be the agent in the Commonwealth for the purposes of this Act for an absentee shareholder in respect of his interest in the company.

807. We have recommended above (paragraph 639) that for practical reasons Companies shall be treated in an exceptional manner—that is, by regarding a Company as beneficial owner and sole taxable entity. If that recommendation be approved, amendment of Section 39 will be required.

808. **Section 41** reads—

41.—(1.) Land owned by a Mutual Life Assurance Society (not being land of which the society is mortgagee in possession, or which the society has acquired under or by virtue of a mortgage) shall not be liable as against this society or its policy-holders, to assessment or taxation under this Act.

(2.) For the purposes of this section, a Mutual Life Assurance Society means any assurance society all the profits of which are divided among the policy-holders. In the case of a society which has shareholders who are entitled to receive a share of the profits of the society, a proportion of such land owned by the society, corresponding to the proportion of the total assurances of the society which is represented by its Australian policies, shall not be liable as against the society or its policy-holders to assessment or taxation under this Act.

809. Land owned by a Mutual Life Assurance Society is not exempt from Land Taxation under any of the State Acts. Its exemption under the Commonwealth Act is clearly a question of policy, perhaps based on the ground that the payment of life assurance premiums is a special form of thrift which, in the general interests of the community, it is desirable to encourage, not only by the exemption granted under the Income Tax Assessment Act of amounts up to **£50** paid as premiums on life policies, but by exempting from Land Tax the lands of such societies. Should it be decided to continue the exemption, there seems no reason why the section should not disappear and the provision form part of Section 13. **We are unable to see any justification for the exemption applying in any degree in the case of Proprietary Life Assurance Societies.**

810. **Section 42A** reads—

42A. Where land is occupied, controlled, or used by a person who is not the owner and there is no lease or agreement for a lease for a definite term in respect of the occupancy, control, or user of the land, the person occupying controlling, or using the land shall be deemed to be the lessee for life of the land and shall be assessable as provided in section twenty-seven of this Act:

Provided that the Commissioner may exempt the person occupying, controlling, or using the land from the provisions of this section, if he is satisfied that the arrangement is of a temporary nature, as to which matter the decision of the Commissioner shall be final and conclusive.

811. **Where land is occupied as contemplated by this section,** as the interest of the person occupying, controlling, or using the land is of so indefinite a nature, **in our opinion the whole liability for payment of tax should be imposed upon the actual owner of the land.** If this were likely to cause any hardship, it would be within the power of the owner to put an end to the occupation or to arrange for a lease in accordance with which the interests of the lessor and lessee would be separately estimated for purposes of taxation.

812. **Section 43** reads—

43. Where under this Act—

(*a*) any person is deemed to be the secondary taxpayer in respect of any land or interest; and

(*b*) it is provided that there shall be deducted from the tax payable by the secondary taxpayer, in respect of the land or interest, such amount (if any) as is necessary to prevent double taxation,

the amount of the deduction (if any) shall be the lesser of the following amounts:—

(*a*) the amount of tax payable in respect of the land or interest by the secondary taxpayer; or

(*b*) the aggregate of the amounts of tax (if any) payable in respect of the land or interest by the primary taxpayer and by any precedent secondary taxpayer:

Provided that the secondary taxpayer shall be assessed and liable in respect of the land or interest, notwithstanding that the primary taxpayer is exempt from taxation in respect of the land or interest, or that there is no primary taxpayer in respect of the land or interest.

813. If our recommendation with regard to the beneficial ownership basis be adopted, this section will become unnecessary. An important element in our consideration is the simplification of the Act by the abolition of the complex scheme of primary taxpayers and secondary taxpayers. The proviso to this section deals with cases where the primary taxpayer is exempt from taxation in respect of the land or interest or where there is no primary taxpayer in respect of such interest. There are instances, exemplified by Glenn's case (20 C.L.R. 490) in which land is vested in a trustee, but at a given time there is no person entitled in equity to an estate of freehold in possession of the land. In such cases, as was held by the High Court in the case cited, the trustee is entitled to the whole of the estate in possession, both legal and equitable, and under the beneficial ownership basis would therefore be the sole taxpayer.

814. **Section 44.**—This section contains provisions as to appeals to the High Court and other Courts. Attention is invited to the section of this Report headed "Board of Appeal" (page 198).

815. **Section 45** reads—

45.—(1.) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from; and land tax may be levied and recovered on the assessment as if no appeal were pending.

(2.) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

816. The Land Tax Assessment Act, unlike the Income Tax Assessment Act, contains no provision for the lodging by a taxpayer of an objection to assessment, although the Regulations provide for that course. Under the Income Tax Assessment Act the lodging of an objection is the first step to be taken by a taxpayer who is dissatisfied with the Commissioner's assessment, and if the Commissioner, after consideration of an objection, disallows it, either wholly or in part, written notice of the decision is given to the taxpayer, who, if dissatisfied, may within 42 days request the Commissioner to treat his objection as an appeal and to forward it to a Court (named by the taxpayer) or to the Board of Appeal.

817. The insertion in the Land Tax Assessment Act of similar provisions will, we assume, follow the adoption of our recommendation under "Board of Appeal."

818. In the course of his evidence, the Commissioner of Taxation informed us that frequent representations had been made to him with regard to the harshness of a strict application of the section to the extent of compelling payment of the total tax assessed, although a *bonâ fide* appeal was pending. The Commissioner expressed the opinion that amendment of the Act might reasonably be made, to provide that, where the Commissioner is satisfied that the appeal is not frivolous, payment of the tax may be deferred until the decision of the appellate tribunal is given. The Commissioner went on to say that such a provision should not, in his opinion, be extended to mere objections to assessment by a taxpayer which are not followed up by an appeal to a Court or other prescribed tribunal, as the Department had had unfortunate experience in two States, where the office was flooded with objections by taxpayers which, in many cases, were not properly stated, and in a great number of instances were not followed by any further action on the part of the objectors.

819. **We recommend that it be provided that a taxpayer, when lodging an objection to assessment, should be required to pay tax upon the amount which he admits is taxable, or 75 per cent. of the tax assessed, whichever is the greater.**

820. If the Commissioner on consideration disallows the objection, and the taxpayer does not within the prescribed time exercise his right of requiring the objection to be treated as an appeal, the taxpayer should be required at once to pay the balance of the tax, with interest at a prescribed rate. If, however, the taxpayer requires the Commissioner to treat his objection as an appeal and forward it either to a Court or to the Board of Appeal, in our opinion the payment of the balance of the tax claimed should be allowed to await the decision of the Court or Board. If the tribunal determines any balance of tax to be payable, the taxpayer should be required to pay such balance within 30 days of notification of the decision of the tribunal and also to pay interest thereon at a prescribed rate.

821. **Extension of Time for Payment of Tax and Payment by Instalments.**—In his Seventh Annual Report, page 13, the Commissioner of Taxation pointed out that—

> "The Act as it now stands contains no direct provision empowering the Commissioner to extend the time for payment, or to allow the tax to be paid by instalments, though that power is assumed and used."

Such a power is conferred upon the Commissioner by the Income Tax Assessment Act, and

822. **We recommend an amendment of the Land Tax Assessment Act giving a similar power to the Commissioner under that Act.**

823. **Section 50** reads—

50. Every person who fails to pay the amount payable by him in respect of land tax before the expiration of thirty days after it has become due shall be liable by way of additional tax to a further amount of ten per centum on the amount of the tax :

Provided that the Commissioner may in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax or any part thereof. The Commissioner shall furnish to the Treasurer annually, for presentation to Parliament, a report of all such remissions with a statement of the reasons therefor.

824. This section does not fix a time within which any additional tax imposed under its provisions shall be paid.

825. **We recommend** that any additional tax levied under this section be made payable on a date to be named in the notice, being not less than 30 days after service by post of notice to pay, and that, in the case of non-payment, penalty at the rate prescribed for non-payment of the original tax be levied. Where there is failure to pay tax within the prescribed time, the section provides a penalty of 10 per cent. **This, in our opinion, should be varied to correspond with our recommendation in the case of Income Tax,** as set out in paragraph 554 of our Third Report, which reads :—

> "In our opinion, a rate per cent. per annum should be prescribed in lieu of the present absolute 10 per cent., and **we recommend that the rate be 10 per cent. per annum.** In making this recommendation, we do not recommend any limitation upon the discretion now given to the Commissioner to remit the penalty or any part thereof."

826. **Refunds—Time within which Application may be made.**—The following is quoted from the Seventh Annual Report of the Commissioner of Taxation :—

> "It is desirable to bring the Act into line with the Income Tax Assessment Act on the question of refunds desired by the taxpayer.
>
> The Conference of Taxation Commissioners agreed that no refund should be made on a taxpayer's application unless it is made within three years after the payment of the tax. This proposal was incorporated in the Income Tax Assessment Act, and it is considered that a similar provision should be incorporated in the Land Tax Assessment Act. The reason for this decision was that the taxpayer should be able to discover an overpayment within three years of having made the payment, since he has only his own assessment to attend to."

827. **We recommend amendment of the Land Tax Assessment Act as indicated by the Commissioner, with an additional provision of the nature indicated in paragraph 546 of our Third Report,** which reads :—

> "The provision limiting the taxpayer's right to refund of tax upon alteration in his assessment due to an application made by him within three years after the payment of the tax should not be held to govern those cases in which such application is based upon a Departmental ruling not previously available to the taxpayer." (See also recommendation under "Office Orders," page 199.)

828. **Section 59** reads—

59. If within three years after any land tax has been paid it is discovered that too little in amount has been paid, the taxpayer liable for the tax shall forthwith pay the deficiency :

Provided that nothing in this section shall operate to limit or affect the liability of the taxpayer or any other person under section fifty-three of this Act.

829. **We recommend amendment of this section to allow the taxpayer 60 days within which to pay the amount originally short paid.**

830. **Section 65** reads—

65.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not, to attend and give evidence before him, or before any officer authorized by him in that behalf, concerning any land or assessment, and to produce all books documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he, or the officer so authorized by him, may administer an oath.

(3.) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

831. The Commissioner has pointed out to us that obstructive tactics have been adopted in several cases to prevent the Department obtaining information to be placed before the Court with a view to assisting it to arrive at a proper judgment of the value of land. Fuller powers to obtain information are necessary, and the Commissioner suggests that Section 65 (1.) be amended to read :—

> 1. The Commissioner may by notice in writing require any person whether a taxpayer or not
>
> (*a*) to furnish him with such information as he may require ; and
>
> (*b*) to attend and give evidence before him, or before any officer authorized by him in that behalf, concerning any land or assessment, and to produce all books, documents, and other papers whatever in his custody or under his control relating thereto."

We endorse the recommendation of the Commissioner in this respect. A consequential amendment of Sub-section (3.) will be necessary so that it shall apply also to persons affected by the proposed amendment of Sub-section (1.).

832. A consequential amendment will also be necessary in Section 68 (*a*) by inserting after the word "return" the words "or information."

833. **Section 66—Relief Section.**—For recommendation relating to this section see heading "Relief Board" (paragraph 723).

SECTION XXXI.

MIDLAND RAILWAY COMPANY OF WESTERN AUSTRALIA.

834. Oral evidence on behalf of the above Company, supplemented by a volume of documentary information, was submitted to the Commission. So far as the facts presented by the Company can be considered as being directly related to taxation, they centre round the Company's view that in the special circumstances of its case, Commonwealth Land Tax, and, to a less extent, State Land Tax, operate harshly. After an analytical examination of the documents submitted and careful consideration of the other evidence, **the Commission has come to the conclusion that its Terms of Reference do not empower it to make a direct recommendation upon the special claims submitted by the Company.**

835. The fact should be mentioned that representations on behalf of the settlers upon the Company's lands in Western Australia were also made to the Commission, but those representations may be regarded as indirect rather than direct—that is, they did not express any grievance of the settlers themselves in relation to Land Taxation, but suggested an amendment of the definition of "Unimproved value," which, in their opinion, would relieve the Company, and indirectly lead to an improvement of the position of the settlers. (For recommendation with regard to "unimproved value," see Section of this Report "Definitions as to Value," page 192.)

836. In order to prevent any misconception as to the relation of this Report to our Second Report, in which we dealt with the Harmonization of Commonwealth and State Taxation, we wish to invite attention to Section XX. (page 184 of the present Report), and to state explicitly what is there implied, namely, that some of the recommendations in this Report must be regarded as alternative only, since they will be rendered unnecessary if the recommendations of the Commission on "Harmonization" (Second Report, paragraphs 249–50), or those expressed in the Reservation of Mr. Commissioner Jolly on that subject, be given effect.

In concluding this, our Fourth Report,

We have the honour to be,

Your Excellency's most obedient Servants,

W. WARREN KERR (Chairman.)

JOHN JOLLY.

J. G. FARLEIGH.

W. T. MISSINGHAM.

JOHN THOMSON.

S. MILLS.

M. B. DUFFY.

S. E. JELLEY, Secretary.

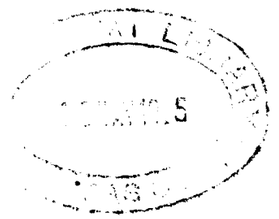
Melbourne, 3rd November, 1922

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT,
Government Printer for the State of Victoria.

1923.
(Second Session.)

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

REPORT



ROYAL COMMISSION ON TAXATION;

TOGETHER WITH APPENDICES.

FIFTH AND FINAL REPORT.

Presented by Command: ordered to be printed, 13*th June,* 1923.

[*Cost of Paper*:—Preparation, not given; 845 copies; approximate cost of printing and publishing, £124.]

1XE.

Printed and Published for the Government of the Commonwealth of Australia by Albert J. Mullett, Government Printer for the State of Victoria.

No. 16—F.18112—Price, 1s. 9d.

FIFTH AND FINAL REPORT

ROYAL COMMISSION ON TAXATION.

CONTENTS

	PAGE
Introduction	221
Estate Probate and Succession Duties	222
British Estate Duty	222
Inheritance Taxes in the United States of America	223
Frequency of Successions—Limit of Tax in relation to	224
Life Tenants and Remaindermen—Computation of Respective Interests	224
Commonwealth Estate Duty Assessment Act—Summary	225
Brief Summary of Probate and Succession Legislation in the several States	227
New South Wales	227
Victoria	228
Queensland	228
South Australia	229
Western Australia	230
Tasmania	230
Northern Territory	230
Estate or Succession Duty—Which Form should be Adopted ?	230
Definition of Terms	230
British and Australian Legislation	230
New Zealand Legislation	231
European Death Duties	231
Basic Concept	231
Principle Governing Choice between Estate and Succession Duties	231
Relative Simplicity	232
Retrospective Provisions	232
Succession Duties—Reasons for Preferring	232
Life Interest—Taxation of, under Estate Duty and under Succession Duty	233
Estate in Remainder—When should Duty be Paid ?	233
Revenue Effect of Change from Estate Duty to Succession Duty	233
Amount Exempted from Duty	234
Exemption, Continuous	234
„ Conditional	234
„ Vanishing	234
Australian Provisions	235
Type of Exemption Recommended	236
Differentiation—Consanguinity	237
Great Britain	237
Commonwealth	237
New South Wales	237
Victoria	237
Queensland	237
South Australia	238
Western Australia	238
Tasmania	238
Graduation	238
Practice in Australia	238
Commonwealth	239
New South Wales	240
Victoria	240
Queensland	240
South Australia	241
Western Australia	241
Tasmania	241
Practice in New Zealand	241
Practice in Great Britain	242
Scales of Rates—Lack of Guiding Principle	242
Ratio of Successions to Estates	242
Estate Duty—Value-Groups	242
Regression in the Commonwealth Scale	243
Determination of Maximum Rate a Question of Policy	243
Form of Rate Scale	244
Graphical Illustration	244
Rules for Computation of Duty	244
Illustrative Tables	245
Modes of Adjusting Scale to Varying Requirements	

CONTENTS—*continued.*

	PAGE
Property Passing under Settlements	245
Joint Interests	245
Corporation Duty	246
Board of Appeal	247
Office Orders	248
Anomalies arising under Commonwealth and States' Scales of Rates	248
Miscellaneous	250
Date of Valuation for Probate	250
Valuations made for one Authority—Acceptance by another Authority	250
Grant of Probate—Practice in States not uniform	250
Re-sealing of Probates	251
Taxation dependent upon location of documents of Title	251
Comments on Various Sections of the Commonwealth Estate Duty Assessment Act	252
Section 3—Definitions	252
"Administrator"	252
"Debts"	252
Secrecy	253
Section 8, Sub-section (3.) (a), Real Property, including Property subject to a general power of appointment, taxable	253
Sub-section (4.), Gifts *inter vivos* and Settlements	254
Sub-section (4.), (5.)—Life Interest held by Testator	254
Sub-section (4.)—Gift of which possession and enjoyment not immediately assumed by donee	254
Interest receivable and payable	254
Sub-section (5.), Exemption of Bequests and Gifts for Religious, Charitable Purposes, &c	255
Sub-section (6.), Preferential Rates	255
Widow, Children, or Grandchildren	255
Adopted Children	255
Illegitimate Children	256
Widowers	256
Sub-section (7.), Deduction of Duties paid outside Australia	256
New Provision—Transfers where consideration inadequate	256
Section 10, Sub-section (1.), Administrator to furnish Returns of Estate	257
Section 11, Further or Other Returns—Persons liable to furnish	257
Section 14—State Valuations may be used for Commonwealth Purposes	257
Section 16—Default Assessments	258
Section 17—Debts, Land and Income Taxes, deductible—Estates of Residents	258
Section 18—Debts, Land and Income Taxes, deductible—Estates of Absentees	258
Section 19—Compounding Duties	258
Section 20—Amended Assessments—Time Limit	259
Section 22—Making of Assessment—Proof by Copy	259
Section 24—Objections and Appeals—Probable need for recasting section	260
Sub-section (8.), Repeal recommended	260
Section 25—Duty to be paid though Appeal Pending	260
Sections 25-28—Consequential Amendments	261
Section 31—Penalty for Late Payment	261
Section 35—Apportionment of Duty among Beneficiaries	261
Section 37—Registration of a Charge upon Property where Duty unpaid	261
Section 44—Access to Land, Buildings, Books, Documents, &c.	262
Section 45—Power to obtain Evidence	262
Section 47—Offences—Penalty	262
Section 47A (Proposed New Section)—Omissions, &c., in Returns	262
Section 48—Under-valuation—Penalty	263
Entertainments and Amusements Taxation	263
Commonwealth Entertainments Tax Assessment Act	263
Rates payable	264
Definitions	264
Obligations of Proprietor	265
Clubs, &c.	265
Exemptions	265
Refunds	265
Entertainments for Patriotic Purposes	265
Right of Entry	266
Offences and Penalties	266
British Entertainments Duty	266
Rates	266
Exemptions	267
Penalties	267
South Australian Amusements Duty	267
Rates	267
Definitions	267

CONTENTS—*continued.*

	PAGE
Entertainments and Amusements Taxation—*continued.*	
South Australian Amusements Duty—*continued.*	
Exemptions	268
Penalties	268
Tasmanian Amusements Duty	268
Rates	268
Exemptions	268
Penalties	269
New Zealand Amusements Tax	269
Criticism by Witnesses	269
Musical Societies	269
Board of Appeal—Reference to in certain cases	269
Comments on Suggested Amendments of the Commonwealth Entertainments Tax Assessment Act	270
Payments for Articles—Taxability	270
Proprietor—Widening of Definition	270
Security Bond—Breach of Conditions	270
Default Assessments—Power to make	270
Exemption of Certain Entertainments	270
Non-payment of Tax within seven days—Proposed Penalty	270
Secrecy	270
Board of Appeal	271
Consideration of Objections	271
Probable Revenue effect of 1922 Changes in Rates	271
Entertainments Tax—Should it be Permanent?	271
War-time Profits Tax Assessment Act	272
Acknowledgments	272
Appendices—	
No. 10.—Table showing separate and combined effect of Commonwealth and State Death Duties	xxxiii
No. 10A. Table showing separate and combined effect of South Australian Succession Duty and Commonwealth Estate Duty	xxxv
No. 11.—Graph, Average Rates of Death Duties, Great Britain and Australasia, and "Standard" Scales indicated by Commission, up to £2,100,000 taxable value	xxxvii
No. 12.—Graph, Average Rates of Death Duties, Great Britain and Australasia, and "Standard" Scales indicated by Commission, up to £200,000 taxable value	xxxix
No. 13.—Graph, Average Rates of Death Duties, Great Britain and Australasia, and "Standard" Scales indicated by Commission, up to £20,000 taxable value	xli
No. 14.—Graph, Average Effective Rates of Death Duties (Commonwealth and State combined) in each State	xliii
No. 15.—Table comparing Commonwealth Estate Duty with Succession Duty (average 2½ successions)	xlv
No. 16.—Table comparing Commonwealth Estate Duty with Succession Duty (average 2 successions)	xlvi

The numbering of the pages, paragraphs, and appendices continues the numbering of the First, Second, Third, and Fourth Reports.

COMMONWEALTH OF AUSTRALIA.

FIFTH AND FINAL REPORT OF THE COMMISSIONERS.

To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor-General and Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY :

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

(1) The equitable distribution of the burdens of taxation ;
(2) The harmonization of Commonwealth and State taxation ;
(3) The giving to primary producers of special consideration as regards the assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions ; and
(4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour, in continuation of our First, Second, Third, and Fourth Reports, dated respectively 27th October, 1921, 13th April, 1922, 21st July, 1922, and 3rd November, 1922, to report hereunder upon the following subjects coming within the Terms of Reference :—

(32) Estate, Probate, and Succession Duties.
(33) Commonwealth Estate Duty Assessment Act.
(34) Brief Summary of Probate and Succession Legislation in the Several States.
(35) Estate or Succession Duty, which form should be adopted ?
(36) Amount Exempted from Duty.
(37) Differentiation—Consanguinity.
(38) Graduation.
(39) Property passing under Settlements.
(40) Joint Interests.
(41) Corporation Duty.
(42) Board of Appeal.
(43) Office Orders.
(44) Anomalies arising under Commonwealth and States' Scales of Rates.
(45) Miscellaneous.
(46) Comments on Various Sections of the Commonwealth Estate Duty Assessment Act.
(47) Entertainments and Amusements Taxation.
(48) War-time Profits Tax Assessment Act.

One of our colleagues, Mr. John Thomson, resigned early in November, 1922. We were thus deprived of the advantage of Mr. Thomson's assistance in the preparation of this our Final Report.

SECTION XXXII.

ESTATE, PROBATE, AND SUCCESSION DUTIES.

838. Taxes of this character take two forms, the more common of which may be called an Estate or Probate Duty, inasmuch as it is an amount levied upon the total of an estate of a deceased owner, as distinguished from a tax upon the value of a beneficiary's interest. In this form it is very ancient, as there is evidence that Death Duties of this kind were collected in Egypt as far back as the 2nd century B.C.*

839. **British Estate Duty.**—During the feudal period in England, feudal lords commonly exacted contributions upon the devolution of property at the death of the tenant. The earliest statutory tax upon estates of deceased persons in England was levied under an Act of the year 1694. This tax came to be known popularly as the Probate Duty. At first it was merely a Stamp Duty of **5s.** upon each Probate or Letters of Administration. Fifteen years later, the first attempt was made to impose the tax with reference to the value of the property, but only personal property was made taxable. It is a coincidence that the Statute imposing the present British Estate Duty was passed exactly 200 years after the Statute above mentioned, namely, in 1894. The Statute of 1894 was of great importance, for the reason that it extended the tax to **real** property, which for 200 years had escaped this form of Death Duty, and also because it embodied a complete scheme of graduation, with a correlative aggregation of interests.

840. The history of British Death Duties, however, is not exhausted when the story of the imposition of tax upon the estates of deceased persons has been told. In 1796 an Act was passed imposing a tax which came to be known as the Legacy Duty. The tax was levied—

> "in respect of the acquisition by collaterals and strangers of property through the testacy or intestacy of its deceased owner."

The tax had reference to **personal** property only, a second Bill for the taxation of real estate on similar lines having been withdrawn in view of the opposition which developed. The Act of 1796, which, it will be seen, is in the nature of a tax upon beneficiaries rather than upon the estate of a deceased person, is still part of the group of Statutes in Great Britain regulating the so-called Death Duties. In 1853 a Succession Duty was imposed, which also, like the Legacy Duty, is a tax upon beneficiaries, and which extended the taxation of beneficiaries' interests to **real** property. The present British Death Duties are levied under three Acts, namely, the Estate Duty Act of 1894, which imposes a tax upon the total value of a deceased estate, and the complementary Legacy Duty and Succession Duty Acts.

841. The following table shows the rates of Estate Duty now levied in Great Britain. These rates are imposed on the total net value of the estate, and are not subject to any deductions on account of the degree of relationship to the testator of the beneficiaries :—

Where the Net Principal Value of the Estate—		Rate of Duty per cent.	Where the Net Principal Value of the Estate—		Rate of Duty per cent.
Exceeds—	And does not exceed—		Exceeds—	And does not exceed—	
£	£		£	£	
100 ..	500 ..	1	150,000 ..	175,000 ..	17
500 ..	1,000 ..	2	175,000 ..	200,000 ..	18
1,000 ..	5,000 ..	3	200,000 ..	225,000 ..	19
5,000 ..	10,000 ..	4	225,000 ..	250,000 ..	20
10,000 ..	15,000 ..	5	250,000 ..	300,000 ..	21
15,000 ..	20,000 ..	6	300,000 ..	350,000 ..	22
20,000 ..	25,000 ..	7	350,000 ..	400,000 ..	23
25,000 ..	30,000 ..	8	400,000 ..	450,000 ..	24
30,000 ..	40,000 ..	9	450,000 ..	500,000 ..	25
40,000 ..	50,000 ..	10	500,000 ..	600,000 ..	26
50,000 ..	60,000 ..	11	600,000 ..	800,000 ..	27
60,000 ..	70,000 ..	12	800,000 ..	1,000,000 ..	28
70,000 ..	90,000 ..	13	1,000,000 ..	1,250,000 ..	30
90,000 ..	110,000 ..	14	1,250,000 ..	1,500,000 ..	32
110,000 ..	130,000 ..	15	1,500,000 ..	2,000,000 ..	35
130,000 ..	150,000 ..	16	2,000,000 ..	.. .. ..	40

* See *The Taxation of Capital.* Soward and Willan. Waterlow and Sons Ltd., London Wall, London, 1919. We are also indebted to the same valuable work for other information in this section with regard to British and Continental Death Duties.

842. The following table shows the rates of Legacy Duty and Succession Duty now levied in Great Britain :—

Relationship of the Beneficiary (or the Person of nearer consanguinity whom he has married) to the Person from whom the Benefit is derived.	Rates of Legacy Duty and Succession Duty.
1. Husband or wife	1 per cent.
2. Lineal ancestors or issue	1 ,,
3. Brothers or sisters or their descendants	5 ,,
4. Brothers or sisters of the father or mother or their descendants	10 ,,
5. Brothers or sisters of a grandfather or grandmother or their descendants	
6. Other collaterals or strangers	

843. **Inheritance Taxes in the United States of America.**—The following particulars concerning the general scope of the American Inheritance Taxes are culled from a contribution upon the subject by Mr. John Harrington, Inheritance Tax Counsel of the Wisconsin Tax Commission, published in Volume LVIII. of the *Annals of the American Academy of Political and Social Science* (March, 1915).

844. The Inheritance Tax in the United States of America is of comparatively recent origin. Since the adoption of this form of taxation by the State of New York in 1885, it has extended rapidly, and now forms part of the taxation system in about four-fifths of the States of the Union.

> "The Wisconsin law is modelled upon the New York law, as it existed prior to 1911, **and is fairly typical of the laws prevailing in most of the States.** Its salient features may be briefly summarized as follows :—
>
> "The tax is in legal theory upon the transfer or the right to receive the property of the decedent, not upon the property itself. But **the tax is measured by the amount of property passing to the beneficiary**, and is made a lien upon such property, and a personal charge against the executor and the beneficiary until paid. A tax is imposed not only upon the transfer of property by will or intestate law, but also upon any transfer by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.
>
> The primary rate is 1 per cent. when the transfer is to husband, wife, children, father or mother; 1½ per cent. to uncles, aunts, nieces and nephews; 3, 4 and 5 per cent. to relatives further removed, according to degree of kindred; and 5 per cent. to strangers in blood, corporations and other organizations, except municipal, religious, charitable and educational corporations within the State, which are exempt.
>
> The above primary rates apply to the first $25,000 received by the beneficiary. The next $25,000 bears a rate of one and a half times the primary rate; the next $50,000 twice the primary rate; the next $400,000, two and a half times the primary rate; and all above $500,000 three times the primary rate. Thus it will be seen that a distant relative or a stranger in blood will pay 15 per cent. upon the excess over a half-million dollars that he may receive.
>
> An exemption from the tax is allowed of $10,000 to a widow, $2,000 to each of the other relatives named in the first section, $500 to those in the second section, and lesser amounts to more distant relatives, down to $100 to those in the fifth class. These exemptions are taken out of the first $25,000.
>
> The Inheritance Tax is imposed and collected during, and as a part of, the settlement of estates in the County or Probate Courts, and is usually paid by the executor and charged against the share which he is required to pay over to each beneficiary upon such settlement."

In answer to the question—"If a decedent lived in one State and owned property in another State, to which State should the tax be paid?" Mr. Harrington writes :—

> "Quite early in the administration of the law it was decided that, if the property is real estate, the tax is due to the State where the land is located. This rule has been affirmed repeatedly, and has received general acquiescence.
>
> Where, however, the foreign property is personal, it was early held to follow the residence of the owner and to be taxable in the State where the deceased had his domicile. But numerous States held that the property was taxable in the State where located, and in such cases the same property was subjected to double taxation. After eliminating all real estate, and all personal property located in the State of the owner's domicile, the property so subjected to double taxation is relatively unimportant in amount

and not sufficient in any sense to serve as a basis for condemnation of the law. Nevertheless possible double or multiple taxation is a problem of sufficient moment to demand the careful attention of students and legislators.

The recent amendment to the Wisconsin Law (Section 1087 -11, Sub-sections 3-8, Statutes of 1913) is intended as an important step toward the elimination of double taxation, without surrendering the right to tax the transfer of securities representing Wisconsin corporate property. It provides in substance that the stocks, bond and other securities of a non-resident decedent shall be subject to the Inheritance Tax in this State at a value proportionate to the value which the Wisconsin assets of the corporation bear to the entire assets. It is true that this law does not cover the entire situation, nor have its administrative problems been fully worked out.

Argument is frequently made on behalf of the Inheritance Tax as an economic measure, designed in some degree to reduce 'swollen' fortunes. There is no basis for such argument; and a State tax heavy enough to have that effect would probably drive much of the liquid capital out of the State, and prevent capital from coming in."

845. **Frequency of Successions—Limit of Tax in relation to.**—There has been much discussion as to the average interval between any two successions to property, and, while the average duration of a generation of inheritance has commonly been taken at about 30 years, the exceptions from the average are so important that several countries have adopted provisions under which the Estate Duty is reduced, or is not levied at all, if a second succession to property occurs within a short specified period. For example, in Great Britain, if property consisting of land or a business passes on death a second time within five years, substantial allowances are made in the Estate Duty, according to a sliding scale ranging from an allowance of 50 per cent. where the second death occurs within a year of the first death down to 10 per cent. where it occurs more than four years later than the first death. In the United States, under a law of 1918, no tax is charged upon a second succession if occurring within five years of the succession upon which Estate Duty has been paid. Similar provisions exist in some other countries—for example, Germany, Chile and Japan.

Australian Statutes contain no provisions of the sort. While such allowances are appropriate where Death Duty is levied in the form of an Estate Duty, there is, in our opinion, little justification for their adoption where a Succession Duty in the form we recommend (paragraph 897) is levied in lieu either of Estate Duty or of a combination of the two forms of Death Duty.

It may, of course, happen that "quick" successions occur, involving in each case the transfer of the whole estate of the deceased to one person. In those circumstances, an allowance on account of the rapidity of succession would be equally appropriate, whether the Duty levied were in the form of Estate Duty or of Succession Duty; but the circumstance that the whole estate passes in each case to one person is unlikely to occur except in cases of small estates, where the tax would be at a lower rate.

846. **Life Tenants and Remaindermen.—Computation of respective interests.**—For the purposes of the assessment of Estate Duty in Australia, the practice is to use actuarial tables for determination of the values of the respective interests where property devolves upon one person for a life tenancy with remainder over. In France, with a view to simplicity, the respective interests are determined in accordance with an arbitrary scale approximating to the results obtained from computations based upon the average expectancy of life at various periods. The French table is as follows :—

Age of Usufructuary.	Value of Life Interest.	Value of Reversion.
Not exceeding 20	7/10ths of the whole property ..	3/10ths of the whole property
Over 20 but not exceeding 30 ..	6/10ths ,, ,, ..	4/10ths ,, ,,
,, 30 ,, ,, 40 ..	5/10ths ,, ,, ..	5/10ths ,, ,,
,, 40 ,, ,, 50 ..	4/10ths ,, ,, ..	6/10ths ,, ,,
,, 50 ,, ,, 60 ..	3/10ths ,, ,, ..	7/10ths ,, ,,
,, 60 ,, ,, 70 ..	2/10ths ,, ,, ..	8/10ths ,, ,,
,, 70	1/10th ,, ,, ..	9/10ths ,, ,,

847. Although the French table is simple, it is open to the objection that the intervals of ten years within which no change in the proportion of value occurs are so long that serious inequities may arise which cannot arise under the method of calculation adopted in Australia.

SECTION XXXIII.

COMMONWEALTH ESTATE DUTY ASSESSMENT ACT.

848. This Act came into force in December, 1914, and under it Duty is levied and payable upon the net value, as assessed under the Act, of the estates of persons dying after the commencement of the Act (Section 8 (1)).

849. In determining the net value of an estate, all debts due and owing at the time of death are allowable deductions, if the deceased person was domiciled in Australia (Section 17). If the deceased person at the time of death was not domiciled in Australia, the deductible debts are debts due and owing to persons resident in Australia, or contracted to be paid in Australia, or charged on Australian property (Section 18). Allowable deductions include Probate and Succession Duties payable under any State Act, but do not include voluntary debts or funeral or testamentary expenses (Section 3).

850. Duties lawfully paid in any place outside Australia in respect of any part of the estate outside Australia are deductible from the Duty assessable under the Act (Section 8 (7)). Under an Amending Act passed in October, 1922, deductible debts now specifically include Federal and State Land and Income Taxes which become due and payable after death and within one year after the payment of Duty on any assessment under the Act (Sections 2 and 3).

851. The rates of Duty chargeable under the *Estate Duty Act* 1914 are :—

Where the Total Value of the Estate after deducting all Debts—	Duty is payable at the Rate per cent. of—
Exceeds One thousand pounds and does not exceed Two thousand pounds	One pound
Exceeds Two thousand pounds	One pound, with an additional percentage of one-fifth of a pound for every One thousand pounds or part of One thousand pounds in excess of the sum of Two thousand pounds, but so that the percentage shall not exceed Fifteen pounds

Duty is levied at two-thirds of the above rates on so much of the estate as by will, intestacy, gift *inter vivos* or settlement passes to the widow or children or grandchildren of the deceased person (Section 8 (6)).

852. For the purposes of the Act, the estate of a deceased person comprises :—

(*a*) His real property in Australia (including real property over which he had a general power of appointment exercised by his will).

(*b*) His personal property, wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia.

(*c*) His personal property in Australia (including personal property over which he had a general power of appointment exercised by his will), including all debts, money, and choses in action receivable or recoverable by the administrator in Australia, if the deceased had at the time of his death a foreign domicile (Section 8 (3)).

(*d*) Property (*a*) which passed from the deceased person by any gift *inter vivos* or settlement made before or after the commencement of this Act within one year before his decease, or, being property comprised in a settlement under which he was tenant for life, the life interest of which was surrendered by him to the remaindermen within one year before his decease ; or

(*b*) In which he had a beneficial interest at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person (Section 8 (4)).

Property (real or personal) which is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes, is exempt from Estate Duty (Section 8 (5)).

853. Every administrator is required to lodge a full and complete return of all the estate in Australia within three months of the death of the deceased person in respect of whose estate he is administrator (Section 10).

In the event of an administrator failing to furnish the necessary return, or of the Commissioner not being satisfied with the return made by an administrator, the Commissioner is empowered to issue a default assessment, against which, however, an appeal may lie (Section 16).

854. The Act permits of the adoption by the Commonwealth, for the purposes of the Act, of the value of dutiable estate as assessed for Duty under a State law in respect of the same estate (Section 14).

To meet special cases in which the dutiable value of an estate is not fairly ascertainable, the Commissioner is authorized to compound the Duty on such terms as he thinks fit (Section 19).

855. The Commissioner may within one year after the last payment on account of Duty make such alterations or additions to an assessment as he thinks necessary to insure accuracy (Section 20 (1)).

If an amended assessment discloses liability for additional Duty, the administrator is only liable in respect of such additional Duty to the extent of any property then under his control, or which can be legally applied by him for the purpose, unless in the first instance he had been guilty of fraud or gross negligence, in which case he is held personally liable for the additional Duty (Section 20 (2) and (3)).

If an amended assessment discloses an overpayment of Duty, the Duty paid in excess of the amount payable is refunded by the Commissioner (Section 20 (4)).

856. Objections against assessments may be made in writing within 30 days after service by post of the notice of assessment, or within a further 30 days at the discretion of the Commissioner (Section 24 (1)).

An administrator who is dissatisfied with the Commissioner's decision upon his objection may within 30 days after receipt in writing of that decision appeal to the High Court or the Supreme Court (Section 24 (4)).

If the original assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the one appealed against (Section 24 (6)).

Where an assessment is based solely upon assessment made under the law of a State, there is no right of appeal against the Commonwealth assessment, unless an appeal has been made from the State assessment (Section 24 (8)).

Appeals do not entitle an administrator to defer payment of Duty (Section 25).

857. Duty assessed is payable within thirty days after the service by post of the notice of assessment (Section 29).

The Commissioner may extend the time for payment of Duty or accept payment thereof by instalments, upon receipt by him of security for payment of the Duty, and provided the Duty is paid within a period of two years (Section 30).

A penalty of 10 per cent. of the Duty unpaid is imposed if Duty is not paid within 30 days after service by post of the notice of assessment (Section 31) ; but the Amending Act of October, 1922, gives the Commissioner discretionary power to remit the penalty or any part thereof—the latter provision having retrospective effect to 1st July, 1921 (Section 4).

858. Duty assessed under the Act is made a first charge upon the estate in priority over all other encumbrances, and any disposition of the estate or any part of it is prohibited until the Duty thereon has been paid, or until the Commissioner certifies that he holds security for the payment of the Duty sufficient to permit any specified part of the estate to be disposed of (Section 34 (1)). Contravention of this provision of the Act renders an administrator personally liable for the Duty (Section 34 (2)).

859. Section 35 of the Act sets out the manner in which an administrator shall apportion the Duty payable in respect of an estate (exclusive of so much of the estate as is exempt from Duty) among the beneficiaries :—

(*a*) The Duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests ; and

(*b*) Where there are any beneficiaries under the will each of whom takes only specific bequests or devises of a value not exceeding Two hundred pounds, the Duty which under paragraph (*a*) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests :

Provided that for the purposes of this section the value of the interests of the widow or children or grandchildren of the deceased shall be reckoned at two-thirds of their assessed value.

860. The Act permits the Commissioner to arrange for separate assessments of the Duty payable in regard to the respective interests of the beneficiaries in any separate properties, or in any defined portions of the same property, as he considers reasonable (Section 36 (1)). The Duty so separately assessed is thereafter charged solely upon the separate estate in respect of which it has been assessed. Payment of any Duty so separately assessed will free the part of the estate in respect of which the Duty was assessed from any charge for unpaid Duty separately assessed on any other portions of the estate (Section 36 (2)).

861. The Commissioner may register any outstanding Duty as a charge on property registered with the Registrar-General or Registrar of Titles of any State (Section 37). In the event of the non-payment of Duty by the final date fixed for payment, the Commissioner may apply to the Court for an order for the sale of a portion of the estate sufficient to satisfy the Duty (Section 39).

862. The Act gives the Commissioner or any officer authorized by him the right of full and free access at all times to all lands, buildings, places, books, documents, &c., for the purposes of the Act (Section 44).

863. The Commissioner may by notice in writing require any person to attend and give evidence on oath before him or before any duly authorized officer concerning any estate or assessment (Section 45).

864. The Act prescribes various maximum penalties for the following offences :—

1. The obstruction of any officer acting in the discharge of his duty under the Act or the Regulations.
2. The failure or neglect to duly furnish a return.
3. The refusal or neglect to attend and give evidence when required.
4. The making or delivering (knowingly and wilfully) of any false return.
5. The under-statement of the value of an estate with intent to defraud.
6. The evasion of assessment or Duty by fraud or wilful act, default or neglect.

The Act constitutes the two last-named indictable offences, and prescribes a maximum penalty of £500 or imprisonment for three years (Sections 46, 47, and 48).

SECTION XXXIV.

BRIEF SUMMARY OF PROBATE AND SUCCESSION LEGISLATION IN THE SEVERAL STATES.

865. **New South Wales.**—Duty is charged on all estate in New South Wales whether real or personal. The following property is subject to Duty, viz. :—

Property—

(*a*) disposed of by will or settlement containing trusts to take effect after death ;
(*b*) comprised in any gift made within three years before death ;
(*c*) passing under any settlement by which an interest or benefit is reserved to the deceased for life, or for the life of any other person or for any period determined by the death of deceased or any other person, or by which deceased has reserved the right to restore or reclaim any property or the proceeds of the sale thereof ;
(*d*) comprised in any gift made at any time of which possession and enjoyment has not been assumed by the donee ;
(*e*) comprised in a *donatio mortis causa*, made at any time ;
(*f*) which deceased has at any time caused to be conveyed to or vested in himself and any other person jointly so that the beneficial interest therein passes or accrues by survivorship to any person ;
(*g*) in which the deceased or any other person had an interest limited to cease on death of deceased, **unless**—

such disposition was *bonâ fide* made or effected within [*sic*] three years before death and—

bonâ fide possession and enjoyment was assumed immediately upon disposition and thenceforward retained ;

(*h*) consisting of money payable under any policy of assurance which has been kept up by deceased for the benefit of a beneficiary ;
(*i*) consisting of any annuity or other interest provided by deceased to the extent of the beneficial interest accruing by survivorship or otherwise on death of deceased ;
(*j*) in respect of which deceased had general power of appointment ;

(*k*) which on death passes to any other person by virtue of any agreement made by deceased to the extent by which the value exceeds any consideration receivable by the estate of the deceased under such agreement;
(*l*) which deceased has within three years before death transferred to or vested in a private company in consideration of shares or other interest therein;
(*m*) Specialty debts secured over property in New South Wales;
(*n*) Shares held at time of death in any company or corporation carrying on business in New South Wales.

866. Valuation is made as at the date of grant of probate, and all interest, &c., accrued up to that date is dutiable.

867. Estates under £1,000 net value are not liable to Duty. Over that amount the Duty rises by grades from 2 per cent. to a maximum of 20 per cent. on a net value of over £150,000. Where the net value of estate passing to widow, children or grandchildren does not exceed £5,000 and the deceased was domiciled in New South Wales, Duty is payable at half the rate otherwise payable.

868. Interest at 6½ per cent. is payable on the amount of Duty outstanding, and is calculated from six months after death up to date of payment.

869. **Victoria.**—Duty is payable on the real and personal estate of a deceased person situated in Victoria. Bequests to charities are exempt. Property passing under gifts *inter vivos* made within one year of death is dutiable, as is also property the subject of any gift *inter vivos* whenever made if possession was not immediately entered into by the donee and thereafter retained continuously to the entire exclusion of the donor. Any property to which the deceased was originally entitled, and which he voluntarily causes to be registered jointly in the names of himself and any other person so that part or the whole of the beneficial interest passes to the survivor, is, to the extent of such beneficial interest, dutiable. Duty is charged on all property over which the deceased had a general power of appointment; on property passing under conveyances and assignments made with intent to evade payment of Duty, and on property passing under settlements containing trusts to take effect after the death of the settlor. Property given by way of *donatio mortis causa* is also dutiable.

The estate is valued as at date of death.

870. The rates of Duty are as follows:—

(*a*) Where the estate passes to strangers by will or to certain relatives by settlement—

Under £200	Exempt
Exceeding £200 but does not exceed £300	1½ per cent.
Exceeding £300 but does not exceed £400	2 per cent.

&c., reaching a maximum rate of 10 per cent. on estates exceeding £20,000.

(*b*) Where the estate passes to widow, widower, ancestor or descendant—

Under £500	Exempt
Exceeding £500 but does not exceed £1,000	2 per cent.
Exceeding £1,000 but does not exceed £2,000	3 per cent.

&c., reaching a maximum rate of 10 per cent. on estates exceeding a net value of £100,000.

871. **Queensland.**—Probate Duty is charged in respect of every grant of probate or letters of administration made in respect of the Queensland estate of a deceased person at the following rates, viz.:—

If the net value is less than £300	Nil
If the net value is more than £300	For every £100 or part thereof, £1

8 2. Probate Duty is payable only on the **personal** estate which comes into the hands of the executor or administrator.

873. Succession Duty* also (which is not limited to personal estate) is payable as follows:—

Where the aggregate successions amount to less than £200 ..	Nil
Where the aggregate successions amount to £200 but do not exceed £1,000	2 per cent.
Where the aggregate successions amount to more than £1,000 but do not exceed £2,000	3 per cent.

and thence graded to—

Where the aggregate successions amount to more than £27,500 but do not exceed £30,000	8 per cent.

Exceeding £30,000, 8 per cent. plus ⅓ per cent. for each £5,000 or part thereof, but not to exceed 15 per cent.

* See also paragraph 884.

Where the property passes to wife or lineal issue the Duty charged is:—

Where the total value of the estate—

Does not exceed £500	Nil
Exceeds £500 but does not exceed £2,500 ..	One-half prescribed rates
Exceeds £2,500 but does not exceed £5,000 ..	Two-thirds prescribed rates

and where the successor is not a stranger in blood but is other than the wife or husband or lineal issue the Duty charged is:—

The prescribed rates plus one-half, but not to exceed 15 per cent;

and where the successor is a stranger in blood the Duty charged is:—

Double the prescribed rates, but not to exceed 20 per cent.

874. Duty is charged on realty situated in Queensland and on all personalty. Every disposition of property by reason of which any person becomes entitled to property or the income therefrom after the death of some other person is regarded as a succession. The interest accruing to a survivor under a joint tenancy is a succession. A person deriving a general power of appointment upon the death of another is regarded, when he exercises this power, as the successor to the property. Dispositions accompanied by a reservation of a benefit to the grantor confer a succession, as do also those made to take effect at periods depending on death or made for the purpose of evading Duty. Duty on realty is payable by four half-yearly instalments, and may be paid in advance, subject to a discount of 4 per cent per annum. Gifts *inter vivos* made within two years of death are dutiable as successions.

875. For Probate Duty an estate is valued as at the date of grant of probate; but for Succession Duty as at the date when the succession takes effect.

876. **South Australia.**—Death Duty in South Australia, unlike that of other States, takes the form of a true Succession Duty; similar to that levied in Great Britain. (See also para. 884.) Real property in South Australia and personal property wherever situated is dutiable if the deceased person was domiciled in South Australia. Duty payable outside the State on any property not situated in South Australia may be deducted from the Duty payable thereon in South Australia. Duty is payable in addition on—

(*a*) property passing by *donatio mortis causa*;
(*b*) property accruing to any person under a settlement containing trusts to take effect after death of the settlor or any other person;
(*c*) property accruing to any person under a deed of gift made within three months prior to death of the donor;
(*d*) property the subject of any conveyance or assignment made with intent to evade the payment of Duty, and in this case at double rates.

The value for Duty is determined as at date of death of testator.

877. The rates of duty are as follows:—

(1) On property passing to widow, widower, descendant and ancestor—

If the net present value is—

More than £500 and less than £700	1½ per cent.
More than £700 and less than £1,000	2 per cent.

and so on irregularly, reaching a maximum of 17½ per cent. at a net value of £200,000.

Provided that if the person taking is the child under twenty-one or the widow of the deceased, Duty is charged at half rates if the whole of the estate is valued under £2,000.

(2) On property passing to brother, sister, descendant of brother or sister, or any other blood relative—

If the net present value is—

Under £200	1 per cent.
Over £200 and less than £300	1½ per cent.

&c., reaching a maximum rate of 17½ per cent. at a net value of £50,000.

(3) Where property passes to a stranger in blood, Duty at the rate of 10 per cent. is payable where the net present value of the estate is less than £10,000; if between £10,000 and £20,000, at 15 per cent.; if over, £20,000, at 20 per cent.

Slightly different rates are payable on property passing under a settlement or gift *inter vivos*, though the maximum and minimum rates are the same.

878. **Western Australia.**—Duty is payable only upon the real and personal property in Western Australia. The rates are :—

On an estate of a net value not exceeding £500	1 per cent.
On an estate of a net value exceeding £500 and not exceeding £1,000 ..	2 per cent.
On an estate of a net value exceeding £1,000 and not exceeding £2,500	3 per cent.

and so on irregularly to a maximum of 10 per cent. at a net value exceeding £20,000.

879. Where property passes to parent, issue, husband, wife, and issue of husband and wife, resident and domiciled in Western Australia, Duty is payable at half of the rate otherwise payable. Property the subject of a gift by way of *donatio mortis causa* is also subject to Duty under this Act. Where property passes under a settlement made at any time and containing trusts to take effect after death or by a deed of gift made within six months of death, this is subject to Duty. It may be noted that, with regard to settlements and gifts *inter vivos*, if the settlor or donor was domiciled in Western Australia, personal property situated in Western Australia only is dutiable. Property conveyed or assigned with intent to evade Duty is taxable at double rates. Certain charitable bequests are exempt. For Duty purposes, the estate is valued as at date of death.

880. **Tasmania.**—The State Act applies to the estates of all deceased persons leaving real property in Tasmania or its dependencies and personal property wherever situated if the deceased was domiciled in Tasmania and personal property in Tasmania only if the deceased was domiciled elsewhere. Property passing under a settlement or under a deed of gift made within three years of death is dutiable. Any necessary adjustment of Duty must be made within three years of filing of accounts. Property conveyed or assigned with intent to evade the payment of Duty is dutiable. Any conveyance, assignment, &c., shall be deemed to be made with intent to evade Duty if it is to take effect on the death of the person making it. Property the subject of a *donatio mortis causa* is dutiable.

881. The rates are as follows :—

(*a*) When the value of the property of the deceased person, settlor or donor at the time of his death—

Exceeds £500 but does not exceed £1,000	2 per cent.
Exceeds £1,000 but does not exceed £2,000	2½ per cent.
Exceeds £2,000 but does not exceed £5,000	3½ per cent.

and so on irregularly to a maximum of 10 per cent. on net value exceeding £92,000.

(*b*) Where the property accrues to—

(1) Widow, widower, descendant or ancestor, at above prescribed rates.

(2) Brother or sister, or child of brother or sister, at double the prescribed rates with a maximum of 10 per cent.

(3) Persons beyond the third degree of consanguinity or strangers in blood, the Duty is 10 per cent. throughout.

882. **Northern Territory.**—The South Australian law applies in this Territory, but is administered by the Commonwealth.

SECTION XXXV.

ESTATE DUTY OR SUCCESSION DUTY—WHICH FORM SHOULD BE ADOPTED?

883. **Definition of Terms.**—In some Statutes dealing with Duties leviable upon the estates of deceased persons, the terms "Estate Duty" and "Succession Duty" are rather loosely used. In this Report, the term "Estate Duty" is used as meaning a Duty which is levied upon, and is measured by, the aggregate taxable value of the estate of a deceased owner. The term "Succession Duty" is used as meaning a Duty which, whether or not it includes other elements, is levied upon, and is measured by, the taxable value of the interest of each beneficiary.

884. **British and Australian Legislation.**—As pointed out in paragraph 840, the British taxation of estates of deceased persons is of a dual character—that is, a Probate Duty is levied upon the estate as a whole and a Succession Duty is levied upon the interest of each beneficiary.

The Commonwealth Estate Duty is similar to the English Probate Duty in that the tax is levied upon the total taxable value of the estate. This is true also of all Australian States except South Australia. In Queensland, the scheme of taxation is somewhat similar to that of Great Britain—that is, a Probate Duty is charged upon the whole estate, subject to a small exemption, and an additional tax (the rates of which are graduated according to the total value of the estate) is levied upon the interests of beneficiaries. This latter tax is called a Succession Duty. It is not, however, a Succession Duty in the sense in which we use the term, inasmuch as the rates are determined by the value of the whole estate and not by the amount of the individual bequest. The effect of the dual provisions in the Queensland Act is to impose two Estate Duties, since the so-called Succession Duty, which is really an Estate Duty in its incidence, is increased by 1 per cent., the uniform rate of the so-called Probate Duty. In South Australia, under the Succession Duty Act, the tax levied is a Succession Duty in that it is levied upon the interest received by each beneficiary and the rate does not depend upon the taxable value of the whole estate of the testator.

885. **New Zealand Legislation.**—In New Zealand, the scheme of taxation is similar to that of Queensland. Under the *Death Duties Act* 1909, and amendments thereof, an Estate Duty is levied on the "final balance" in excess of £1,000 of the estate of a deceased person. In addition, a duty called Succession Duty is imposed in respect of every interest acquired or possessed by any person as the "Successor" of the deceased. For further details as to rates, etc., see paragraphs 942, 943.

886. **European Death Duties.**—The form of Death Duties in Europe is described in the following extract from the "Taxation of Capital," Soward and Willan :—

> "In the majority of foreign countries (where the grant of representation as understood by us, [*i.e.*, in Great Britain,] is unknown, and where also there is hardly anything to be found analogous to our system of settlements and trusts), taxation by means of Death Duties is most usually effected through the agency of a single tax, in the nature of an acquisition duty, which more often than not, entirely ignores the administrator or testamentary executor, and looks to no other person than the beneficiary himself for the payment of duty in respect of the acquisition by him of his share of the property forming part of the estate of its deceased owner."

In Holland and Belgium, however, special Transfer Duties upon the estates of deceased persons supplementary to Succession Duties are levied.

887. **Basic Concept.**—A Death Duty in the form of an Estate Duty is the most obvious type, and historically appears to have been the first to be adopted. It has often been regarded, theoretically, as founded upon the conception that, when an owner of property dies, the State naturally asserts itself as its custodian and disposer. Mr. Gladstone, speaking in the House of Commons in reference to the action of the State in such a case, said :—

> "The carrying property in perfect security over the great barrier which death places between man and man is perhaps the very highest achievement, the most signal proof of the power of civilized institutions . . . . . and an instance so capital of the great benefit conferred by law and civil institutions upon mankind, and of the immense enlargement that comes to natural liberty through the medium of the law, that I conceive nothing more rational than that, if taxes are to be raised at all, the State shall be at liberty to step in and take from him who is thenceforward to enjoy the whole in security that portion which may be *bonâ fide* necessary for the public purpose." (*Ibid.*)

This statement was made in connexion with the British Succession Duty Act of 1853, which is a real tax upon successions, but (as already pointed out) is a tax additional to a Probate or Estate Duty, the basis of which latter tax is the value of the whole estate. So far as any question of principle is deducible from Mr. Gladstone's speech, it would seem fair to make the deduction that the mode in which the State should preferably impose its tax is by means of a true Succession Duty and not by means of an Estate Duty.

888. **What principle should govern the choice between these two methods of taxation of the estates of deceased persons?**—This is a question of some difficulty, and the absence of a settled theory on the subject is illustrated by the way in which the taxation has developed in Great Britain during the last 200 years. (See "Estate, &c., Duties," paragraphs 839 and 840).

896. If Duty is imposed as a Succession Duty, and if the same amount of revenue as at present is required to be raised, existing scales of rates, which are applied to the aggregate value of an estate, would need review, as obviously the larger number of taxpayers under the Succession Duty system would be chargeable upon successions of comparatively moderate value. That system, however, in our opinion, rests upon the equitable bases of taxing the individual on the beneficial interest in possession acquired by him and of using that interest as the measure of the tax. In those fundamental respects it is more soundly based than is an Estate Duty.

897. **We recommend, for the reasons stated in paragraph 892, and more particularly on the grounds of equity of incidence and simplicity of principle, that existing Duties levied upon the net aggregate value of the estate of a deceased person be superseded by a system of Succession Duties—**

1. Levied upon and measured by the taxable value of the interest of each beneficiary;
2. Payable by the beneficiary (Successor), either directly or on his behalf by the trustee or executor;
3. Due and payable at the time when the Successor or any person in his right or on his behalf becomes **entitled in possession** to the succession or to the receipt of the income and profits thereof;
4. Based upon the value of the property at the date of death of the testator, if the Successor then becomes entitled in possession, or, if there is an intervening estate, upon the value of the succession at the termination of that estate.

SECTION XXXVI.

AMOUNT EXEMPTED FROM DUTY.

898. The question of a general exemption, so keenly debated by witnesses in connexion with Income Tax, was not prominent in the evidence taken in relation to Estate Duty. This may be due to the fact that the witnesses were, almost without exception, professional men—managers of Trustee Companies, Solicitors, Accountants, and others—who deal with matters arising out of Estate or Succession Duty in a fiduciary capacity only. But the questions of the nature, amount, and of the persons or class of persons entitled to any exemption, are vital questions to those who are affected by the tax.

899. Three types of exemption may be enumerated:—

(1) **A continuous exemption**—that is, a specified sum which, irrespective of the total net value of the estate, is allowed as a deduction from what would otherwise have been the taxable value of the estate or succession. An illustration is the exemption allowed under the Commonwealth Land Tax legislation under which tax is levied upon unimproved values of land owned by a taxpayer only if those values exceed **£5,000,** and only in respect of the values in excess of that amount.

(2) **A conditional exemption.**—An illustration is the exemption allowed in respect of the Commonwealth Estate Duty, under which, if the net value of an estate does not exceed **£1,000,** no duty is levied, but, if the net value exceeds **£1,000,** duty is levied upon every £1 of the total net value. This type of exemption has been adopted by all the Australian Legislatures except that of Western Australia, but, as pointed out in paragraphs 982–985, it produces anomalies.

(3) **A vanishing exemption**—that is, a specified amount, say **£500**—which, if it constitutes the whole of the net value of an estate, remains untaxed; but, if the net value exceeds **£500,** the exemption diminishes in accordance with a prescribed scale, until it reaches the vanishing point—for example, if the exemption diminishes by **£1** for every **£1** by which the value exceeds **£500** then if the total value were **£750** the exemption would be **£250** and the taxable amount **£500**; but, if the value were **£1,000** (which in that case would be the vanishing point), the whole amount would be taxable. This case may be regarded as a variant of No. 2. There is no example of this type of exemption in Australian Estate or Succession Duty Acts, though it is not uncommon in Acts dealing with Income Tax.

Variants to all of these types would be found in exemptions expressed in terms of duty and not in terms of value of Estate or Succession. We do not know of any examples of such variants in actual practice.

900. Australian Legislatures have adopted varying provisions with regard to the exemptions under Estate or Succession Duty Acts.

The following table exhibits in brief form the provisions now operative :—

Legislature.	Name of Principal Act.	Nature of Exemption.	Amount of Exemption.	Persons Entitled to Exemption.	Remarks.
			£		
Commonwealth	*Estate Duty Assessment Act No.* 22, 1914	Conditional exemption* that is an amount which is exempt if the total taxable value does not exceed that amount, but which, if that amount is exceeded, does not apply to any part of the value of the Estate	1,000	All	
New South Wales	*Stamp Duties Act* No. 47, 1920	,, ,, ,,	1,000	All	
Victoria	*Administration and Probate Act* 1915	,, ,, ,,	200	All	
,,	,, ,,	,, ,, ,,	500	Widow, Children, Grandchildren	
Queensland	*Succession and Probate Duties Act* 1892	,, ,, ,,	199	All	
,,	,, ,,	,, ,, ,,	500	Widow, Children, Grandchildren	**Probate duty of 1 per cent. is also payable on the personal property in all estates exceeding £300 in value**
South Australia	*Succession Duties Act* 1893	,, ,, ,,	499	Widow, Widower, descendant, ancestor	
Tasmania	*Deceased Persons Estates Duties Act* 1915	,, ,, ,,	500	,,	
Western Australia	*Administration Act* 1903	No provision			

* For definition of this term *see* paragraph 899.

901. **Australian Provisions.**—It will be seen from the above Table that the following is the position with regard to Exemptions from Tax under the law of the Commonwealth and that of the several States.

902. **Commonwealth.**—The Commonwealth Estate Duty Assessment Act allows an exemption of **£1,000** in the form that, where the total value of the estate does not exceed **£1,000,** no Duty is charged.

903. **In New South Wales,** if the deceased was domiciled in that State, an exemption of the same amount (**£1,000**) as under the Commonwealth law is allowed.

904. **In Victoria,** in the case of property passing under a will or intestacy to the widow or a child, or under a settlement to the widow, widower, a descendant or ancestor, no Duty is charged if the value of the estate does not exceed **£500 ;** and, in the case of property passing under a **will** to other relations or strangers, or under a **settlement** to other relations, no Duty is charged if the value does not exceed **£200.**

905. **In Queensland,** no Succession Duty is charged where the value of the estate does not exceed **£199**, nor in respect of property passing to the widow, children, or grandchildren where the value of the estate does not exceed **£500.**

906. **In South Australia,** no Duty is charged upon a succession taken by the widow, widower, a descendant or ancestor, if the total value of the succession does not exceed **£499.** This exemption from Duty is not extended to property taken by other persons.

907. **In Western Australia,** there is no exemption to any class of beneficiaries.

908. **In Tasmania,** no Duty is charged where the net value of the estate does not exceed **£500.**

909. Exemptions granted under the Commonwealth and State laws, as particularized in the foregoing paragraphs, are all in the form that, if the total net value of the estate (or succession) exceeds the amount of the exemption, Duty is charged upon the total net value.

910. **Type of Exemption Recommended.**—**In our opinion, the type of exemption which should be adopted is a "vanishing exemption,"** rather than an exemption continued throughout the whole range of values. The foundation principle of an exemption, more or less imperfectly expressed in Income Tax or Estate or Succession Duty Statutes which contain exemption provisions, is the dependency of the taxpayer upon the income or capital benefit received.

911. In Income Tax there is only one possible means of measuring such an allowance—that is, directly or indirectly exempting from taxation any income not exceeding a certain sum. (For the purposes of this paragraph, it is unnecessary to consider whether the exemption is or is not continuous). In an Estate or Succession Duty, the recognition of the great social fact of family relationship, with its implications of expectancy and dependency, has led to the adoption of a second means, less direct, but hardly less effective, of granting what is virtually an exemption for certain privileged beneficiaries. In the case of an estate of moderate amount (and such estates form a large proportion of all those coming within the range of Estate Duty), and especially in an estate which is wholly left to the widow of the deceased owner, the recipient of the estate or succession is commonly dependent wholly or in great part upon the provision for the future which the net capital value of the estate supplies. While dependency is an element, and an important element, in the consideration of an exemption, there are practical and also theoretical difficulties in the way of exempting from duty an amount which at a reasonable rate of interest would provide a means of livelihood in perpetuity. One great difficulty would be the question of revenue. Under an Estate Duty of what may be called the standard type, that is, where the Duty is levied upon the whole amount of the estate, the revenue difficulty would exist but would be less than under other forms of Death Duty. Under a Succession Duty, which is designed to fall directly upon each beneficiary and to be measured by the extent of each beneficial interest, the revenue question might easily become acute, if any attempt were made to secure to each beneficiary an exemption from Duty in respect of an amount which would return in perpetuity an income of, say **£100.**

912. Two other objections may be noticed—first, that, if dependency is to be the basis of exemption, then strict proof of the financial position of each beneficiary would be required. The necessary investigation might often be difficult and unsatisfactory from the point of view of the Revenue authorities and irritating and inquisitorial from the point of view of the taxpayer. The second objection is that, in the cases where dependency is absolute and earning power is small, non-existent, or impossible to estimate, liberality towards the taxpayer could not be expected to go further than to exempt an amount, the interest upon which would provide a small income for the period covered by the expectancy of life of the person concerned, and not an income in perpetuity. If the taxpayer, say a widow, had attained a certain age, she would in many cases be entitled to the Old Age Pension, and this would constitute a material set-off to any claim for exemption based upon absolute dependency.

913. In the great majority of cases where the estate is small, complete dependency is confined to one or more of those who constitute the immediate family. Where the estate is not small, there may also be dependency, but the amount of benefit received may be so large that the case will be properly met by applying the method of a diminishing exemption. Apart from any other financial capacity, the succession itself, to the extent to which it exceeds the sum beyond which the exemption begins to diminish, affords a measure of capacity to bear tax. The closest degree of family relationship is the safest guide to the classification of the group which should receive the highest or the only exemption from Duty, or, if not exempted, should pay Duty at the lowest rate.

914. **As to the allocation of an exemption, we are of opinion that the exemption should apply only within the most favoured group, Class 1, that is, widow or widower and lineal ancestors or issue (including adopted and illegitimate children). As to the amount of exemption, we consider that the widow of the deceased owner of an estate should be treated more liberally than others coming within Class 1.** (See paragraph 924).

915. **We recommend—**

(1.) That, in the case of the widow of a deceased owner of an estate, the amount to be exempted from Duty should be **£1,000.**

(2.) That, in the case of all others coming within Class 1, the amount to be exempted from Duty should be **£500.**

(3.) That, in both cases, the exemption be a "vanishing" exemption, diminishing by **£1** for each **£1** by which the succession exceeds the amount of the exemption applicable.

The effect would be that, in the case of the widow, the exemption would cease altogether at £2,000, so that, if the amount of the succession exceeded that sum, the whole amount would be taxed. In the case of any other person coming within Class 1, the exemption would cease at **£1,000,** so that, if the amount of the succession exceeded that sum, the whole amount would be taxed.

SECTION XXXVII.

DIFFERENTIATION — CONSANGUINITY.

916. The embodiment in legislation of the idea that Estate or Succession Duties should be differentiated in amount according to the nearness or remoteness of relationship of the beneficiaries to the testator dates back at least 2,000 years.

917. **In Great Britain,** where, it should be noted, there is both an Estate Duty levied upon the total value of the estate of a deceased person and also Legacy Duty and Succession Duty, the differentiation under the Legacy Duty and Succession Duty Acts is in accordance with the Table given in paragraph 842. It will be seen from that Table that the rate levied upon strangers and distant relatives is 10 per cent., while upon the most favoured class, which includes husband or wife, lineal ancestors or issue, the rate is only 1 per cent. The very high degree of differentiation in this case may perhaps be accounted for by the existence also of an Estate Duty, with rates ranging from 1 per cent. to 20 per cent.

918. **Under the Commonwealth Estate Duty Assessment Act,** preferential rates are prescribed in respect of so much of the estate as passes to the widow, children or grandchildren of the deceased. In these cases, two-thirds of the ordinary rates are charged.

919. **In New South Wales,** one-half rates are charged on property passing to the widow of the deceased or to any of the children under 21 years of age, but this provision applies only where the assessable value of the estate does not exceed **£5,000,** and where the deceased owner was at the time of his death domiciled in New South Wales.

920. **In Victoria**, differentiation in favour of the widow and children is effected thus :—

If, under a will or in an intestacy, the only persons entitled are—

the widow, or
the widow and children (which term includes grandchildren), or
the children

of the deceased owner, the estate is taxed on a scale much lower than that which is applied to other cases. Further, if, in the case of property "devised or bequeathed" to the widow and children, or widow or children, the total value of the estate in and out of Victoria does not exceed **£2,000,** and the persons named are the only beneficiaries, or if they are not the only beneficiaries, the total value of their shares does not exceed **£2,000,** duty is levied at half the rates of the lower scale.

921. **In Queensland,** the widow or lineal issue pay Succession Duty at half rates (*) where the total value of the estate (not of the succession merely) does not exceed **£2,500,** or two-thirds of the ordinary rates where the total value of the estate exceeds **£2,500,** but does not exceed **£5,000.** In each case the reduced rates are applied only where the "predecessor" was domiciled in the Commonwealth.

922. **In South Australia,** the Schedule divides beneficiaries into three classes. The first class is composed of the widow, widower, descendant or ancestor of the deceased person. The rates range from 1½ per cent. on successions of values from **£500** to **£699,** to 17½ per cent. on successions of **£200,000** and upwards ; values below **£500** are not dutiable. It is provided that "where the person taking is the child under twenty-one years of age or the widow of the deceased, the duty shall be charged at one-half the foregoing rates, **if the net present value of the whole of the estate of the deceased** is under **£2,000.**" This proviso, which makes the application of a specially privileged rate **upon a succession** dependent upon the value of the whole estate of which the succession may be only a part, constitutes an exception to the general scheme of the South Australian Act, which bases the tax upon the value of the succession.

The second class of beneficiaries consists of brothers and sisters of the deceased person, descendants of a brother or sister, and any person in any other degree of collateral consanguinity to the deceased. In this class, values under **£200** are dutiable at 1 per cent. (there being no exemption), and values above £200 are rated in accordance with a scale which rises to 17½ per cent. upon values of **£50,000** and upwards.

The third class of beneficiaries consists of strangers in blood to the deceased person. In this class, values under **£10,000** are dutiable at 10 per cent ; values of **£10,000** and under **£20,000** at 15 per cent. ; and values of **£20,000** and upwards at 20 per cent.

It will be seen that there is differentiation in favour of beneficiaries in Class 2 as compared with Class 3, and in favour of beneficiaries in Class 1 as compared with both the other Classes.

* This does not affect the Probate Duty, which is charged at a flat rate of 1 per cent upon personal property only, where the value exceeds £100. The Succession Duty is additional, and is levied upon successions making up the estate, after allowing a deduction of the Estate Duty.

922A. **In Western Australia,** half rates are charged in respect of so much of the estate as passes to persons who are *bonâ fide* residents of and domiciled in Western Australia and occupying towards the deceased the relationship of parent, issue, husband, wife, or issue of husband or wife.

922B. **In Tasmania,** a scale of rates is prescribed, applying to property passing to a widow, widower, descendant or ancestor of the deceased person. Double the rates in that scale are charged in respect of property passing to a brother or sister or descendant of a brother or sister or any person in any other degree—not beyond the third degree—of collateral consanguinity to the deceased person. Where property passes to a person in any degree beyond the third degree of consanguinity to the deceased person, or to a stranger in blood, there is a uniform rate of 10 per cent., which, on estates exceeding £500 in value, and not exceeding **£1,000,** is five times the rate applied in the case of widow, &c. (the most favoured class); on estates exceeding **£5,000** in value, and not exceeding **£20,000,** is two and a half times that rate; and on estates exceeding **£20,000** in value, and not exceeding **£100,000,** is twice that rate.

922C. While the question of a general exemption or exemptions to particular classes of beneficiaries is dealt with under the heading "Amount Exempted from Duty," Section XXXVI, the full effect of any **differentiation** can hardly be appreciated, unless the amount, if any, granted by way of **exemption,** is also borne in mind. For particulars of these exemptions see paragraph 900.

923. Of the two methods adopted in Australian Acts for effecting differentiation, namely:—

(*a*) By prescribing a scale applicable to the **least** favoured classes, and prescribing some fraction of this scale for the more favoured class or classes; or

(*b*) By prescribing a scale for the **most** favoured class, and prescribing multiples of this scale for the less favoured class or classes,

we prefer the former method.

924. **We recommend that the Duty**—whether it take the form of an Estate Duty, as at present in force in the Commonwealth and most of the States, or of a Succession Duty, as we recommend (paragraph 897)—**be differentiated in accordance with the following scale:—**

Class.	Persons included in Class.	Proportion of Full Rates.
1	Widow or widower and lineal ancestors or issue, including illegitimate children and children formally adopted	50%
2	Brothers and sisters and their descendants	80%
3	All others	100%

SECTION XXXVIII.

GRADUATION.

925. The principle of graduation, as applied to Income Tax, was discussed in Section XI of our Second Report. The same principle, more or less regular in its application, has been generally adopted in the assessment of Estate and Succession Duties.

926. Attention has already been directed (Sections XXXII–XXXV) to differences in the basal conceptions of the Death Duties levied in Australia and other countries, some taking the form of a simple Estate Duty, some a simple Legacy or Succession Duty and others a blend of both. Differences also occur as to the classification of the beneficiaries who are privileged to pay less than the normal rates which are chargeable to strangers in blood; and as to the proportion or scale of the privilege allowed to the several favoured classes. The latter questions are discussed under the heading "Differentiation—Consanguinity," Section XXXVII.

927. **Practice in Australia.**—In the following paragraphs the graduated scales of the various Australian Acts are briefly reviewed. Except where otherwise indicated the references are to the scales of rates applying to the least favoured persons.

928. **Commonwealth.**—Upon an estate of a net value not exceeding **£1,000** no Duty is levied, and upon estates of net values from £1,001 to £2,000, Duty is levied on every £ of the net value at the rate of 1 per cent. Graduation begins to operate when the net taxable value of an estate (after deducting all debts and State Probate or Succession Duty) exceeds **£1,000.** At a

value of **£1,001** the rate (applicable to the whole estate) is 1 per cent., and rises by steps of ·2 per cent. at each increase of **£1,000** in the net value of the estate, until at **£71,001** it reaches 15 per cent.

929. So far as estates of values from **£1,001** to **£71,001** are concerned, the scale has, in effect, a basic rate of tax of ·6 per cent. (corresponding to the basic rate of Income Tax mentioned in paragraphs 347 to 350 of our Second Report) upon which is superimposed a scale of rates graduating between these values by a series of unvarying steps of ·2 per cent. net at each increase of **£1,000** in taxable value. Each estate (the value of which is not a precise multiple of **£1,000**) bears the rate of Duty applicable to the next succeeding multiple of **£1,000,** up to and not exceeding **£72,000,** at which point graduation is superseded by a flat rate of 15 per cent.

930. The rate of Duty under the Commonwealth Act on the **highest £** of the taxable value of estates between **£1,001** and **£2,000** is 1 per cent. The rate from that point rises regularly with each increase in value of **£1,000** or part of **£1,000** till it reaches 29.4 per cent. on the highest £ of an estate of the taxable value of **£71,001.** On each succeeding £ thereafter the rate is uniformly **15** per cent. The reason that the maximum rate on the highest £, as mentioned in this paragraph, is **29.4** per cent., and not **30** per cent., as might be expected, is that the zero of the Commonwealth scale is at the point represented by Minus **£3,000**; and, when the line of taxable income is reached, the progression has a value of ·6 per cent., as indicated in paragraph 929. There is thus a sharp regression in rate of Duty at **£72,000,** on the highest £ of which the rate is **29.4** per cent., while on each succeeding £ the rate is **15** per cent.

931. The **average** rates of Duty run from **1** per cent. on estates of taxable values between **£1,001** and **£2,000,** suddenly springing to **1.2** per cent. on the whole value of an estate of **£2,001,** and rising thence with each increase of **£1,000** by 69 regular steps each of **·2** per cent., till at **£71,001** it reaches **15** per cent. On each succeeding £, the rate is uniformly 15 per cent. On all estates over **£71,001** in taxable value, the highest rate and the average rate are the same, namely, 15 per cent.

932. Each increase in rate of Duty is by the Act made retrospective to the first £ of net value, with the result that sudden and spasmodic increases in the Duty payable characterise the movement, as the following examples, typical of many others, exhibit:—

On an Estate of the Taxable Value of	The Rate of Estate Duty is	And the Duty Amounts to	If the Estate be £1 Greater in Value, viz	The Rate of Duty on the whole Estate is	And the Duty Amounts to	Making the Effective Duty on the Last Single £ of Taxable Value
£	%	£	£	%	£	£
1,000	Nil	Nil	1,001	1·0	10	10
2,000	1·0	20	2,001	1·2	24	4
10,000	2·6	260	10,001	2·8	280	20
20,000	4·6	920	20,001	4·8	960	40
50,000	10·6	5,000	50,001	10·8	5,402	102
71,000	14·8	10,508	71,001	15·0	10,650	142

933. A method which yields such results is clearly incorrect in theory, and in practice may offer an undesirable inducement—to officials, to augment values so as to bring the estate over the **£1,000** mark, thereby increasing the Duty out of proportion to the increase in value; and to administrators, to keep the value just under the **£1,000** mark. The last item in the foregoing table shows that, under the existing scale—

On an estate valued at **£71,000** the Estate Duty is **£10,508.**
On an estate valued at **£71,001** the Estate Duty is **£10,650.**

The addition of **£1** in value at that point involves an additional Duty of **£142.**

934. **New South Wales.**—Upon an estate of a net value not exceeding **£1,000,** no Duty is levied if the deceased owner was at the time of his death domiciled in New South Wales. On an estate of a net value exceeding **£1,000** left by a person domiciled in New South Wales, and on an estate of any value left by a person not so domiciled, the rates of Duty ascend in steps representing increases of estate value of at first **£1,000,** then **£2,000,** then **£5,000,** and finally **£10,000,** from 2 per cent. on an estate of the taxable value of **£5,000** to 20 per cent. on an estate exceeding **£150,000.** The rapidity of increase in rate is greatest in the case of the smaller estates; less in the case of estates exceeding **£20,000**; and least in the case of estates exceeding **£140,000.** Under the **Income Tax Act** of New South Wales, the rate of tax on any £ of income is fixed; it is not influenced by any question as to whether it forms part of a total taxable income of **£150** or **£150,000**; but under the **Estate Duty Law** of that State the rate of Duty chargeable on the final balance of an estate of any value is made retrospective to the first £. The difference is fundamental; the effect of the Estate Duty provision is to greatly increase beyond the nominal

the effective rate of Duty on the highest £ of the taxable value. This will be readily seen by reference to the following table, the first three columns of which are taken from the Third Schedule of the New South Wales *Stamp Duties Act* 1920:

1.	2.	3.	4.	5.
Final Balance of Estate.		Rate per Centum of Duty	Value of Estate.	Effective Duty on the Highest £.
Exceeding.	Not Exceeding.			
£	£		£	£ s. d.
1,000	5,000	2·0	5,000	2 0 0
5,000	6,000	2·5	5,001	25 0 6
10,000	12,000	5·0	10,001	50 1 0
25,000	30,000	8·0	25,001	125 1 7
70,000	75,000	12·5	70,001	350 2 6
105,000	110,000	16·0	105,001	525 3 2
150,000	..	20·0	150,001	750 4 0

935. As the value of an estate increases from the first £ of any step up to the limit of the step to which the same nominal rate of Duty applies, the effective rate of Duty on the highest £ recedes—in effect the rate of Duty is by turns sharply accelerated and slowly regressive; it moves by fits and starts, a movement which is neither scientific or equitable, and may offer the same possible inducement to both tax gatherer and taxpayer as has been mentioned with regard to the Federal Estate Duty.

936. There are four points at which the rapidity of increase in rates changes; thus:—

On Estates Over the Value of.	Under the Value of.		
£	£		
1,000	5,000	The rate is uniform at 2 per cent.	
5,000	10,000	The rate ascends by ½ per cent. at each interval of	£1,000
10,000	20,000	,, ,, ,, ...	2,000
20,000	140,000	,, ,, ,, ...	5,000
140,000	150,000	,, ,, ,, ...	10,000

and at each change it is to a pitch flatter than the preceding range; just the reverse course to that underlying the theory of diminishing utility of increments of wealth.

937. **Victoria.**—Estates, the value of which, after deducting debts, does not exceed **£200,** are exempt under the Victorian Administration and Probate Acts, but on estates exceeding that figure Duty is chargeable in respect of the whole value at rates varying by 29 steps of dissimilar height and irregular scope from 1.5 per cent. on an estate valued between **£200** and **£300** to 10 per cent. on an estate exceeding **£20,000.** The scheme is irregular and exhibits inconsistency and inequity throughout its movement.

938. **Queensland.**—When the net value of the estate of a deceased person exceeds **£300,** there is payable a Probate or Administration Duty at the rate of 1 per cent. Superimposed upon this is a Succession Duty which is levied on the net value of the estate after deducting the Probate Duty. The rate of Succession Duty is not determined by the amount of the individual succession, but—

> "for determining the rate of Succession Duty there shall be aggregated so as to form one estate the value (after deducting debts) of all property whether situate within or without Queensland and passing on such death."

Successions under **£200** are exempt and from that point Duty at 4 per cent. rises by irregular steps to **£55,000,** at which point it reaches an average of 20 per cent On each succeeding £ the rate is uniformly 20 per cent

Though named a Succession Duty, the basis of assessment is rather that of an Estate Duty, and as such the scale shows defects in form similar to those exhibited by the scale of the New South Wales Act.

939. **South Australia.**—In this State there operates a Succession Duties Act, under which on the net present value of the property inherited from a deceased person by a stranger in blood to such deceased person there is charged a Duty of:—

10 per cent. if the value of the inheritance be under **£10,000;**
15 per cent. if it be **£10,000** and under **£20,000;**
20 per cent. if it reach or exceed **£20,000.**

These rates are based on the net value of the property passing to the individual beneficiary, and are not influenced by the total value of the estate of which such property is a part, but they show the same objectionable characteristics as have already been referred to in regard to other Acts. For example, a succession of **£9,999** passing to a stranger in blood will carry a Duty of £999 18 0
but if the value of the property be **£1** in excess of that figure, it is at **£10,000**
chargeable with a total Duty of 1,500 0 0

the increase of **£1** in value increasing the Duty by £500 2 0

940. **Western Australia.**—Without exempting any portion of the taxable value of the estate of a deceased person, the rates of Duty commencing at 1 per cent. on estates not exceeding **£500** rise at irregular intervals by dissimilar steps. The intervals range from **£500** to **£2,000,** and the increases in rate from ·2 per cent. to 1 per cent. The maximum rate is 10 per cent., which applies where the net value of the estate exceeds **£20,000.**

941. **Tasmania.**—Estates of less value than **£500** are exempt; all in excess of that sum are chargeable at rates rising in unequal steps at varying intervals from 2 per cent. on estates exceeding **£500** and not exceeding **£1,000** to 10 per cent. on estates exceeding **£92,000.**

942. **Practice in New Zealand.**—Under the Death Duties Act of 1909, and subsequent amendments, Estate Duty is levied upon the net value of all property of a deceased person which is situated in New Zealand at time of death and exceeds £1,000. If the net value of the Estate does not exceed £10,000, any interest passing to the widow up to £5,000 is free of duty. From 1 per cent. on Estates between £1,000 and £2,000, the rate rises by increments of 1 per cent. at each step up to 20 per cent., which is reached when £100,000 is passed, the steps at the lower stages being 3 of £1,000, then 3 of £2,000, followed by 8 of £5,000, and finally 5 of £10,000 each.

943. Additional thereto there is payable Succession Duty by any person who acquires a beneficial interest in the Estate of a deceased person. In the case of a total stranger, the scale is:—

Succession not exceeding £500 .. .. No duty
,, exceeding £500 and not exceeding £20,000 .. 10 per cent.
,, exceeding £20,000 .. .. 20 per cent.

Relatives of the deceased are grouped into five classes, from that of a widow (who is allowed a total exemption from Duty if the value of the Succession does not exceed £10,000), through minute classification to "relatives of the deceased in any degree not more remote than the fourth," each grade being allowed substantial concessions on the rates chargeable to more distant relatives or to total strangers.

944. **Practice in Great Britain.**—The Death Duties in Great Britain include Duties which are equivalent to both Estate Duty and Succession Duty.

945. Under the former, Duty is chargeable on the whole of the net value of the estate of the deceased, at rates which, commencing at 1 per cent. on estates valued between **£100** and **£500,** rise regularly by increments of 1 per cent. in steps which vary from **£500** to **£200,000,** the rate being in all cases retrospective to the first taxable £ of estate value. On higher values, the increment in rate is more rapid, and the steps larger, till a maximum of 40 per cent. on estates exceeding **£2,000,000** in net value is reached.

946. Additional to Estate Duty, there is chargeable on individual successions Legacy or Succession Duty, differentiated according to the degree of consanguinity of the successor to the deceased, and rising from 1 per cent. on the net amount of the individual succession in the case of husband or wife (the most privileged class) through five classes to 10 per cent. in the case of the least privileged class. The total Duty chargeable on a succession of **£5,000,** passing to a person in the least favoured class, varies according to the total net value of the estate, as illustrated in the following Table:—

Net Value of Estate of Deceased.	Rate of Estate Duty.	Value of Succession.	Value of Succession after Deducting Estate Duty.	Succession at 10 per cent.	Total Duty Amount.	Equal to per cent. on Succession.
£	%	£	£	£	£	%
5,000	3	5,000	4,850	485	635	12·7
10,000	4	5,000	4,800	480	680	13·6
20,000	6	5,000	4,700	470	770	15·4
30,000	8	5,000	4,600	460	860	17·2
50,000	10	5,000	4,500	450	950	19·0
100,000	14	5,000	4,300	430	1,130	22·6

947. **Scales of Rates. Lack of Guiding Principle.** The scales of rates mentioned in the preceding paragraphs are shown graphically in Appendices 11, 12, and 13. One looks in vain among them for an expression of systematic treatment in accordance with accepted principles of graduation in taxation; they are all *more or less spasmodic* and unmarked by any definite guiding principle.

948. **Ratio of Successions to Estates.** In the absence of statistics exactly in point, there is room for diversity of opinion as to the average number of successions into which estates generally are divided, and probably the proportion in the case of very large estates will differ from that in the case of small estates. We have assumed, for the purposes of this Section, that the ratio generally is 2 or $2\frac{1}{2}$ successions to one estate. This assumption was reached after consideration of the statistics in the Seventh Annual Report of the Commissioner of Taxation, pp. 202-3. It is there shown that 75 per cent. of the total number of estates paying Commonwealth Estate Duty in the financial year 1919-20 were of a dutiable value not exceeding **£5,000.** Of the estates within that group, a very large proportion (probably 80 per cent.) would pass as single successions, *i.e*, the whole to one person in each case. 80 per cent. of 75 per cent. equals 60 per cent. of the whole. Then, if it be assumed that in the remaining 20 per cent. of estates below **£5,000,** and in all estates above that value, the average number of successions is about 4, the average number of successions in all estates would be from say 2 to $2\frac{1}{2}$. If $3\frac{1}{2}$ successions be assumed as the average in estates in the second group, the average for all estates would be exactly 2; while, if $4\frac{3}{4}$ successions be taken as the average of the second group, the average for all estates would be exactly $2\frac{1}{2}$. In many estates there might be a number of small legacies to servants and others, but these would have no material influence upon the position and may be left out of consideration. For the purposes of the subsequent discussion and illustration, we have thought it desirable to consider the two ratios of the average number of successions to each estate mentioned above.

949. **Estate Duty—Value-Groups.**—Regard must also be had to the Duty payable at present by estates within various value-groups; see the following Table, the figures of which are for the year 1919-20:—

Dutiable Value of Estates.	Number.	Percentage in Each Grade of Total Number.	Duty Paid in Each Grade.	Percentage of Duty in Each Grade to Total Duty.
			£	
Under £5,000	3,714	75·5	77,924	5·5
From £5,001 to £25,000 ..	1,137	22·8	301,975	20
Above £25,000	131	2·7	1,089,683	74·5
	4,982	100	£1,469,582	100

The above figures indicate that a change from an Estate to a Succession Duty would affect the revenue with greatest force in respect of estates in the third group, *i.e.*, those above **£25,000** in value. A tabulation of the numbers of estates coming within each group is of partial assistance only in endeavouring to arrive at the probable effect on revenue of the recommended change. The influence of the preponderating Duty paid by the small number of large estates must be a potent factor. Data for an accurate estimate could be obtained only by means of a laborious investigation, and we did not feel justified in asking the Commissioner of Taxation to undertake that investigation for the purposes of our Report.

950. In a scheme of graduation under which the rate on the **highest £** of taxable value would reach, but not exceed, 15 per cent., the corresponding culmination of ascent in rates of Succession Duty would be reached at **£18,000,** on the assumption that the average estate is divided into **2** successions, and at **£14,400** (which, for convenience, may be replaced by **£15,000),** if the average estate be regarded as divided into $2\frac{1}{2}$ successions.

951. In the cases of Estate and Succession Duties as of Income Tax, an important subject for study is the Duty carried by each individual £ of taxable value; for, whatever be the total value of the estate, each £ in one estate should carry exactly the same Duty as the corresponding £ in every other estate.

952. **Regression in the Commonwealth Scale.**—In the scale of the present Commonwealth Estate Duty, while the prescribed (that is the average) rate on an estate of the taxable value of **£72,000** is 15 per cent., the Duty on the highest £ is nearly 30 per cent. (exactly 29·4 per cent.) and at that point the rate suddenly drops to 15 per cent., which is the rate on each £ above £72,000. The position is identical with that commented upon in our second Report (paragraph 328), where, after quoting similar regressive rates in the Income Tax Scales of Queensland, Western Australia, and New Zealand, we said that those scales show—

> "drops which are in each case a reversal of the principle applied throughout the whole range of the graduated scale—for progression in the rates of tax there is substituted (probably unintentionally) regression which is usually regarded as an unjust mode of taxation."

953. In the Schedule of the Commonwealth Land Tax Act, passed prior to the Estate Duty Act, and in the Income Tax Act, passed subsequently, regression has been avoided in continuing the line of Tax beyond the graduated scale. Under the Estate Duty Act, as at present, the nominal rate and the average rate never exceed 15 per cent.; and it might be inferred from the form of the Rates Schedule that the attention of Parliament was concentrated upon the question of the point at which the progressive increase of the **average** rate should cease.

954. To avoid regression, and also to avoid the imposition of a rate in excess of 15 per cent. upon any part of the taxable value of an estate, two courses would be open:—

(1) To retain, as in the present Commonwealth Scale, a value of **£72,000** as the terminal point of the progression, but to reduce the present rate of progression by one-half. The result would be that the rate on the **highest £** of an estate of **£72,000** would be 15 per cent. Applying that percentage as a flat rate, to such part of the value of an estate as exceeds **£72,000,** then, however great the estate, *the rate on the highest £ would reach* but never exceed 15 per cent., and the average rate, while continually approaching, would never quite reach 15 per cent.

At a value of	**£144,000,**	the average rate would be		11·40	per cent.
,, ,,	**£216,000,**	,,	,, ,,	12·60	,,
,, ,,	**£360,000,**	,,	,, ,,	13·56	,,
,, ,,	**£1,008,000,**	,,	,, ,,	14·48	,,

(2) To terminate the present progressive scale of the Estate Duty Act at **£36,000** (where the rate on the highest £ is 15 per cent.), and impose a flat rate of 15 per cent. upon every £ of value in excess of **£36,000.** If this course were adopted then, however great the estate, the rate on the highest £ would reach but never exceed 15 per cent., and the average rate, while continually approaching, would never quite reach, 15 per cent.

At a value of	**£72,000,**	the average rate would be		11·40	per cent.
,, ,,	**£144,000,**	,,	,, ,,	13·20	,,
,, ,,	**£216,000**	,,	,, ,,	13·80	,,
,, ,,	**£360,000,**	,,	,, ,,	14·28	,,
,, ,,	**£1,008,000,**	,,	,, ,,	14·74	,,

955. To avoid regression and also to avoid altering the present progressive scale of the Estate Duty Act, it would be necessary to alter the flat rate imposed upon such part of the value of an estate as exceeds **£72,000** to 30 per cent., which at **£72,000** is the rate on the highest £. Then, applying that percentage, however great the estate, the rate on the highest £ would reach, but never exceed, 30 per cent., and the average rate, while continually approaching, would never quite reach 30 per cent. For example, assuming 30 per cent. had been so adopted, then:—

At a value of	**£144,000,**	the average rate would be		$22\frac{1}{2}$	per cent.
,, ,,	**£216,000,**	,,	,, ,,	25	,,
,, ,,	**£360,000,**	,,	,, ,,	27	,,
,, ,,	**£1,008,000**	,,	,, ,,	29	,,

If with a maximum rate of 15 per cent. on the highest £ it were decided to terminate the progression at some point other than **£36,000**, the necessary adjustment could be made by flattening or steepening the line of ascending rates. If it were desired to carry the progression to a point at which the rate on the highest £ would be higher than 15 per cent., another point for the termination of the Scale would, of course, have to be selected.

956. **Determination of Maximum Rate a Question of Policy.**—We refrain from expressing an opinion as to whether, in Estate or Succession Duty, a graduated Scale carried to the point at which the **average** rate is 15 per cent. (which involves a rate of 30 per cent. on the highest £, as in the present Commonwealth Schedule) is too high or too low. That is a question to be decided from time to time, according to the needs of the revenue and the extent to which it is considered necessary or prudent to exact tribute from successions to private wealth passing at death, whether that tribute be levied by one Authority only or by two Authorities as at present.

957. **Form of Rate Scale.**—Having regard to equitable incidence and productiveness of the Duty, convenience in use and ready adaptability to varying requirements, a regularly graduated scale easily understood, delicately adjustable, and admitting of easy calculation of Duty, should be chosen. Such a scale would be represented by a straight line which, starting at the point representing zero value, would ascend regularly and uninterruptedly with each increase of £1 in taxable value of a Succession up to the net value chosen as the limit of progression, and beyond that limit would be continued by a flat rate on so much of the value of the Succession as exceeds the chosen limit.

958. **Graphical Illustration.**—For the purposes of illustration we show (on the graphs, Appendices Nos. 11, 12, and 13) the lines of average rates under such a scale. These lines may conveniently be referred to as "standard" scales.

958A. **Rules for Computation of Duty.** The simple arithmetical rules for computation of Duty may be expressed thus :—

(A) If the ascent be to 15 per cent. on the **highest £** at **£15,000**

The standard rate of Duty per cent. on the **highest £** of taxable value of any Succession is found by inserting a decimal point before the third last integer. The result is the standard rate per cent. expressed in pounds and decimals of one pound—thus :—

On the **highest £** of a succession of **£13,746**, the "**standard**" rate of Duty per cent. is 13·746.

The standard **average** rate of Duty per cent. on every £ of the taxable value of any Succession is found by inserting a decimal point before the second last integer. The result is the "standard" average rate per cent. expressed in shillings and decimals of a shilling—thus :—

The "standard" **average** rate per cent. on a succession of **£13,746** is 137·46 shillings, or a small fraction over 6·873 per cent.

Note.—The "standard" **average** rate of duty is one-half of the rate on the **highest £** at every point within the scale of graduation.

(B) If the ascent be to 15 per cent on the **highest £** at **£18,000**—

The standard average rate of Duty per cent. on every £ of the taxable value of any Succession is found by inserting a decimal point before the last integer. The result is the standard average rate per cent. expressed in pence and decimals of a penny—thus :—

The "standard" **average** rate per cent. on a succession of **£13,746** is 1374·6 pence, or a small fraction over 5·727 per cent.

Note.—The "standard" rate of Duty per cent. on the **highest £** is found by doubling the average rate—in this case 11·454 per cent.

959. **Illustrative Tables.**—In Appendices Nos. 15 and 16 are Tables showing the operation of these scales in a wide range of examples, compared with the scale under the present Commonwealth Estate Duty Act.

960. The Duty chargeable on Successions of varying taxable values is shown in Appendix No. 15, where a limit of 15 per cent. on the highest £ with an average rate of 7·5 per cent. is reached at **£15,000** ; and in Appendix No. 16, where a limit of 15 per cent. on the highest £ with an average rate of 7·5 per cent. is reached at **£18,000.** To these are added supplementary Tables showing the results where a limit of 30 per cent. on the highest £ with an average rate of 15 per cent. is reached at **£30,000** and at **£36,000** respectively.

961. In these Appendices there are shown in—

Column A—The aggregate taxable value of estates of deceased persons ;
,, B—The rates per cent. of Estate Duty under the present Commonwealth Act ;
,, C—The Duty now payable on each **estate** ;
,, D—The equivalent value of each **succession** on the assumption of an average of 2½ (Appendix No. 15) or 2 (Appendix No. 16) successions to each estate ;
,, E—The average rate of Succession Duty applicable on the scale above described ;
,, F—The rate per cent. on the highest £ ;
,, G—The Duty which would be payable on each Succession ;
,, H—The total Duty payable in respect of the assumed number of Successions to an estate ;
,, I—The percentage which H bears to C ;
,, J—The amount by which the duty at present payable under C would exceed that payable under H.

962. **Modes of Adjusting Scale to Varying Requirements.**—As was pointed out in paragraphs 340/51 (Second Report), there are several ways in which a scale (if it be adopted as a standard) may be adjusted from time to time to varying requirements:—

(A) Duty may be levied at a percentage over or at a percentage under the standard scale; or

(B) A fixed sum (such as the basic rate of **5d.** in the Commonwealth Income Tax) may be added to the rate per cent. on the value of all Successions, thus raising the rate of Duty uniformly, irrespective of the Standard rate of Duty applicable to the Succession*; or

(C) A fixed sum may be deducted from the rate per cent., thus lowering the rate of Duty uniformly, the converse process of B; or

(D) The range of graduation may be extended to higher rates on Successions of greater value; or

(E) The range of graduation may be restricted to lower rates on Successions of less value, the converse process of D; or

(F) At the point where graduation stops, the rates may be continued on a more or less sharply progressive, flat, or regressive line.

It should be added that the scales outlined in this Report as "standards" are much steeper than the scale of the present Commonwealth Estate Duty.

SECTION XXXIX.

PROPERTY PASSING UNDER SETTLEMENTS.

963. Under the Commonwealth Act, where property the subject of a settlement passes to any person as the result of trusts or dispositions in the settlement taking effect only after the death of the settlor or any other person, it is dutiable if the settlement was made within one year before the settlor's death. In one important respect, however, the Commonwealth Act differs from the Acts of all the States, in that the State Acts bring within the dutiable area **all** property passing under the operation of trusts or dispositions in a settlement which take effect after the death of the settlor **independently of the date of the settlement.** In any scheme of Death Duties, it seems necessary, if the scheme is to be comprehensive and consistent, that, where there is a disposition of property taking effect after the death of a settlor or other person, such property should be deemed taxable, whether it passes through the operation of a will or codicil, or through the operation of a Deed having the effect of a testamentary disposition. On this general view, it seems therefore that no distinction should be made between a will and a settlement, where both operate in the same way, that is, where the settlement is in effect a testamentary disposition.

964. **We recommend that the Commonwealth Act be amended** to conform with the general principle of Death Duties and with the Acts of all the States **by rendering dutiable all property which passes under a trust or disposition in a settlement taking effect after the death of the settlor or of any other person named in the settlement, whether the settlement be made within one year of the settlor's death or at any earlier period.**

SECTION XL.

JOINT INTERESTS.

965. Where an interest in real estate is held jointly by two or more persons, the law attaches to that form of tenure the important right of survivorship, so that, where there are two joint tenants and one dies, the survivor becomes owner of the whole estate. The same effect follows where there is a joint ownership of personal property. Under the Commonwealth Act, the benefit which accrues to the survivor or survivors of two or more joint tenants has not been treated as a taxable interest, though it is so under some of the State Acts, as also under the British *Succession Duty Act* 1853. The relevant section of that Act reads as follows:—

> "Where any persons shall, at or after the time appointed for the commencement of this Act, have any property vested in them, jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the Duty, if any, chargeable thereon by this Act in proportion

* To this suggested method Mr. Commissioner Duffy expresses dissent (see Second Report, page 166).

to their respective interests in the succession; and any beneficial interest in such succession, accruing to any of them by survivorship, shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived."

Upon the principle which governs our recommendation (paragraph 964) with regard to settlements, whenever made, containing trusts or dispositions taking effect upon the death of the settlor, **we are of opinion that the beneficial interest which accrues by survivorship to a surviving joint tenant should be treated as a taxable interest. We recommend that the Act be amended to effect that purpose.**

This would be applicable whether the scheme of the Act is that of an Estate Duty, as at present in the Commonwealth Act, or of a Succession Duty, which is the form we recommend Death Duties should assume.

966. The principle of this recommendation is partly covered by the proposed amendment to Section 8 (4) (*a*) of the Act, which, however, is not sufficiently comprehensive to cover the whole ground.

SECTION XLI.

CORPORATION DUTY.

967. The question of applying the principle of Death Duties to corporations which under their charter or constitution have perpetual succession, was discussed in Great Britain for many years before legislative action was taken to impose taxation upon the property of such corporations. It was first proposed that the tax should be payable on the capital of corporately-owned property at stated periods, say every 25 or 30 years, representing the average interval between successions to property. The difficulties in the way of such a scheme led to the substitution of an annual Duty which by the British Act of 1885 was fixed at 5 per cent. upon the net annual income. It is said that the revenue derived from this tax has been disappointing, the highest point having been reached in the year 1915–16, with a figure of **£62,000.** The rate of 5 per cent. as originally fixed has never been increased, and apparently is much too low in comparison with the Death Duties imposed upon privately-owned estates. The Estate Duty, for example, now rises by a graduated scale to 40 per cent. of the taxable capital value. Australian Legislatures have not, so far, enacted any Statute imposing a charge upon corporations, having the same specific intention as the British Corporation Duty; that is, as a substitute for some form of Probate or Estate Duty.

968. There is, no doubt, a continually increasing volume of property, both real and personal, passing into the possession of corporations, or (to use a more familiar term) public companies, and that fact appears to have satisfied British legislators that there is a theoretical and practical justification for the imposition of a tax of the nature of an Estate Duty upon such companies.

969. As a means of preventing too great accumulations of land under conditions inimical to free alienation (and this perhaps is one of the principal reasons which induced the British Legislature to impose the tax) a Duty payable once in a generation, as was first intended, seems a much less powerful instrument than a progressive Land Tax. When, to avoid serious practical difficulties, it is found necessary (as was the case in Great Britain) to impose the tax in the form of an annual levy upon income, its potency as an instrument for effecting a dispersion of interests in land is obviously diminished almost to vanishing point.

But, apart from this aspect, does the theory of such a tax, which rests upon the assumption that property held by a public company escapes taxation of the nature of Estate or Succession Duty, bear analysis? Is not thought upon the subject, in England at least, influenced, perhaps unconsciously, by facts of history which are not facts of to-day?

970. During the prolonged historic struggle to free a large proportion of the total area of arable land in England from the control of "the dead hand," it was the fact that unless the corporations (largely ecclesiastical) which held the land could be **directly** taxed by way of an Estate or Succession Duty, their property would escape such taxation altogether. But the passage of the years has brought an entirely different situation. The property of corporations or companies is represented to-day by shares or stock widely distributed among the public, and, as forming part of the estate of the owners at death, that property comes periodically within the range of Death Duties.

971. It may be said that a corporation as such is not affected by the taxation of the individual owners of its shares or stock. That is true, but, in our opinion, a corporation tax in the nature of or in substitution for a Death Duty can be justified only on one of two grounds, namely:—

(1) That such taxation is necessary to prevent the holding of land out of use or the using of it otherwise than in a manner profitable to the community, *or*

(2) That unless the corporation is itself directly taxed by way of Death Duties the land or other property it holds will not come within the range of Death Duties at all.

As to No. 1, we have already submitted that a Land Tax is a more effective method of inducing the subdivision of large landed estates. As to No. 2, as indicated above, in effect practically all property held by corporations, except that held for religious, charitable, or other public purposes, and for that reason exempted from Death Duties, is now taxed through the Death Duties imposed upon the estates of individual owners of interests in corporations, and its taxation in the hands of the corporations also would be a double taxation.

972. **For the reasons above stated, we are of opinion that neither in theory nor on practical grounds is it desirable to attempt the imposition of a Corporation Tax in the nature of a Death Duty.**

973. Under modern Company Law or by virtue of special Acts of Parliament, corporations or companies enjoy special privileges, and if it were thought necessary to impose some special tax upon them, additional to the taxes to which they are now subject, it would seem more appropriate to impose something in the nature of an annual License Fee. At present the power of the Commonwealth to deal with the matter in that way is incomplete.

SECTION XLII.

BOARD OF APPEAL.

974. In our First Report (page 29) we recommended the constitution and appointment of a Board of Appeal for the purpose of hearing taxpayers' appeals from assessments under the Income Tax Act. By an Amending Act of December 1921, such an Appeal Board was constituted. The members of that Board have since been appointed, and the Board is now in operation.

975. In our Fourth Report (page 198), dealing with Land Tax, we recommended that the existing Taxation Appeal Board, appointed under the Income Tax Assessment Act, be given the necessary powers to deal with appeals arising under the Land Tax Assessment Act.

976. Under the Estate Duty Assessment Act, the present provisions with regard to objections and appeals contained in Section 24 allow an administrator to lodge with the Commissioner an objection in writing against an assessment, stating fully the reasons for the objection. If the Commissioner disallows the objection wholly or in part, the administrator may appeal to the High Court or to the Supreme Court of a State.

977. In our opinion, the functions of the Board of Appeal should be extended to admit of its hearing appeals arising under the Estate Duty Assessment Act. That action would, we think, be justified for the same reasons as have been stated in support of our recommendations with regard to the Board of Appeal under the Income Tax Assessment Act and the Land Tax Assessment Act. The Estate Duty Assessment Act, like the Land Tax Assessment Act, is highly technical, and many questions must arise between taxpayers and the Department which taxpayers would be glad to have the opportunity of referring to an independent tribunal, such as the Board of Appeal, having a simple and inexpensive procedure. We think that, generally, the rights of taxpayers and the powers and duties of the Board of Appeal for the purposes of the Estate Duty Assessment Act should be similar to those which we have recommended in relation to the Income Tax and Land Tax Assessment Acts.

978. **We therefore recommend**—

(1) That the existing Taxation Appeal Board, appointed under the Income Tax Assessment Act, and any subsequent or additional Board of Appeal similarly appointed, be empowered to hear and adjudicate in matters of appeal under the Estate Duty Assessment Act.

(2) That it shall be competent for the Board of Appeal to adjudicate upon matters which involve questions either of law or of fact; that in respect of questions of fact the Board's decision shall be final, but that in respect of questions of law an appeal shall lie from the Board to the High Court or to the Supreme Court of a State.

(3) That in those instances in which (prior to the constitution of the Board of Appeal)—

(1) Notice of appeal to a Court has been given in accordance with Section 24 of the Act, but the case has not come on for hearing;

(2) Objection against assessment has been lodged, but no decision has been given by the Commissioner;

the Act shall provide that taxpayers shall have the option of transferring their appeal or objection, as the case may be, to the Appeal Board.

It is intended that the above recommendations shall apply whether the taxation to be levied takes the form of an Estate Duty, or, as we recommend (paragraph 897) the form of a Succession Duty.

SECTION XLIII.
OFFICE ORDERS.

979. In connexion with the Income Tax, we recommended in our Third Report, pages 170–1 that the Office Orders relating to that Act should be published for the benefit of the public at the earliest possible moment. A similar recommendation was made in our Fourth Report, page 200, in respect of the Orders issued under the Land Tax Assessment Act.

980. All the evidence taken by the Commission upon the several Direct-Taxation Acts administered by the Commonwealth, and our own examination of such of the Orders as were made available to us, have satisfied us that it would be greatly to the public advantage to have access to all Office Orders issued in relation to those Acts as soon as they are issued.

981. **We recommend**, in respect of the Orders issued and to be issued under the Estate Duty Assessment Act :—

(1) That the existing body of Office Orders affecting the general practice of the Department be published at the earliest possible moment, and be offered for sale to the public at a moderate cost.
(2) That all such Office Orders subsequently issued be made accessible to taxpayers as soon as issued.
(3) That, with a view to securing wide publicity, the daily Press in each capital city be furnished with copies of all such Office Orders as soon as issued.
(4) That all such Office Orders be purchasable at each Commonwealth Taxation Office at a moderate cost.
(5) That facilities be provided free of charge at each Commonwealth Taxation Office for the perusal by taxpayers of all such Office Orders as are operative.
(6) That all such Office Orders be made to apply to all assessments affected thereby relating to the current financial year.

SECTION XLIV.
ANOMALIES ARISING UNDER COMMONWEALTH AND STATES' SCALES OF RATES.

982. In the Commonwealth and the State Acts anomalies arise from the fact that, while in every case (except that of Western Australia) estates below a certain value are not taxed, the tax is levied on the whole estate if exceeding that amount. Similar anomalies appear where marked changes in rates occur or where preferential deductions are reduced or disappear, the effect being to increase the rates at various stages of value in a sudden and irregular manner.

983. Under the Commonwealth Act, estates not exceeding £1,000 in value are exempt from taxation, but, as the State tax is allowed as a deduction from the amount taxable by the Commonwealth and as the States' rates vary, the Commonwealth tax begins to operate at different points of value according to the State in which Probate is granted, as the following examples show :—

At lowest rates (nearest relatives), the point at which the Commonwealth tax begins to operate is—

Where Probate is granted in New South Wales	£1,011
Where Probate is granted in Victoria, South Australia, and Western Australia	£1,016
Where Probate is granted in Queensland and Tasmania ..	£1,026

At highest rates (distant relatives and strangers in blood), the point at which the Commonwealth tax begins to operate is—

Where Probate is granted in New South Wales	£1,021
Where Probate is granted in Western Australia	£1,031
Where Probate is granted in Victoria	£1,042
Where Probate is granted in Queensland	£1,076
Where Probate is granted in South Australia and Tasmania ..	£1,112

An added £1 in value at these points entails a tax under the Commonwealth Act—

At lowest rates, of	£6 13 4
At highest rates, of	£10 0 0

and when combined with the State taxes the added £1 in value causes increases in taxation—

At lowest rates, ranging from ..	£6 13 7 to £6 14 0.
At highest rates, ranging from ..	£10 0 6 to £10 2 2.

984. With the exception of the highest rate in Tasmania, which is 10 per cent. throughout, all the State rates are graduated in "steps" though varying in scale in different States. This form of scale produces an anomalous increase of Duty wherever the "step" occurs. The most pronounced of these are shown below :—

State.	Rates.	Estate Value.	Tax.	Additional Duty to be Paid for the £1 Added Value.	Cause of Anomalous Increase of Duty.
		£	£ s. d.	£ s. d.	
New South Wales	Lowest ..	1,000	Nil		
		1,001	10 0 2	10 0 2	Exemption £1,000
		5,000	50 0 0		
		5,001	125 0 6	75 0 6	Preferential rates cease, and at the same point an increase occurs in the scale of rates, the higher rate then being applied to the whole amount
	Highest	1,000	Nil	..	Exemption £1,000
		1,001	20 0 5	20 0 5	
Victoria ..	Lowest ..	500	Nil		
		501	5 0 2	5 0 2	Exemption £500
		2,000	30 0 0		
		2,001	66 12 8	36 12 8	Secondary preferential deductions cease and there is also an increase in the prescribed preferential rate
	Highest	200	Nil		
		201	3 0 4	..	Exemption £200
Queensland	Lowest ..	300	Nil		
		301	3 0 2	3 0 2	Exemption from Probate Duty
		500	5 0 0		
		501	10 0 5	5 0 5	Succession duty commences
		2,500	62 10 0	..	Secondary preferential deductions are reduced
		2,501	80 11 9	18 1 9	Preferential rates reduced by one-sixth
		5,000	172 4 5		
		5,001	250 0 0	77 15 7	Secondary preferential rates cease
	Highest	199	Nil		
		200	8 0 0	8 0 0	Exemption £199
		300	12 0 0		
		301	15 1 0	3 1 0	Probate Duty operates
South Australia	Lowest ..	499	Nil		
		500	3 15 0	3 15 0	Exemption £499
		1,999	29 19 8		
		2,000	80 0 0	50 0 4	Secondary preferential deductions cease, and there is also an increase in the prescribed preferential rate
	Highest	9,999	999 18 0	..	Heavy increases in rates (5 per cent. in each case)
		10,000	1,500 0 0	500 2 0	
		19,999	2,999 17 0	..	
		20,000	4,000 0 0	1,000 3 0	
Western Australia ..	..	..	..	..	No pronounced increases
Tasmania	Lowest ..	500	Nil		
		501	10 0 5	10 0 5	Exemption £500

NOTE.—Where the word exemption appears and the value does not exceed the amount mentioned it is to be understood no Duty is charged, but when the value exceeds that amount Duty is charged on the total value.

By the term "secondary preferential deduction" is meant an allowance under which certain beneficiaries, having a close relationship to the testator, are not only charged Duty upon a lower scale of rates than that prescribed for other beneficiaries, but also, in addition, where the total amount of the estate does not exceed a specified amount, are charged a proportion only (say one half) of the rates of the lower scale.

Fuller information as to Commonwealth and State duties, and as to the combined effect of those Duties in various States, will be found in Appendices Nos. 10 and 10a.

985. The figures in Appendix No. 10 show that upon estates not exceeding **£1,500** in value the Western Australian rates are the lowest, and the Tasmanian rates are the highest. (In this comment the rates referred to are the highest rates in the respective scales, that is, those charged in respect of beneficiaries who are either distant relatives or strangers in blood.) Upon values of **£7,500** and upwards, the Western Australian rates are the same as those of Victoria ; and upon values of **£30,000** and upwards are the same as those of Victoria and Tasmania. The maximum effective percentage of the combined State and Commonwealth taxes is reached with regard to estates in Victoria, Western Australia, and Tasmania at the value of **£80,000**, the combined rate

at that point being 23·50 per cent. The highest effective percentage of the combined taxes occurs in the case of estates in Queensland, where a percentage of 32·85 is reached at a value of **£100,000.** At the highest point of value shown in the Appendix, **£200,000**, it will be seen that the percentage of combined Commonwealth and State taxes is in the case of estates in Queensland 32·85; estates in New South Wales and South Australia 32·00, and estates in Victoria, Western Australia, and Tasmania 23·50.

986. In reading Appendix No. 10, it should be remembered that variations in the Commonwealth Duty in the different States arise from the fact that the State Duty is deducted from the taxable value upon which the Commonwealth Duty is levied.

987. Further, with regard to South Australia, it should be noted that the figures in Appendix No. 10 are comparable with those of other States only on the assumption that each estate passes to one Successor only, the Duty in South Australia being not an Estate Duty, but a Succession Duty (see paragraph 884 of the Report).

988. Appendix No. 10A has been compiled to show the percentage of combined Commonwealth and State (South Australia) taxes to the total value of the estate in cases where the total estate passes either as a whole to one Successor or respectively to 2, 4, or 6 successors. The figures in the Columns relating to Duty payable where the estate passes to one Successor only are the same as those shown in Appendix No. 10.

SECTION XLV.

MISCELLANEOUS.

989. **Date at which Valuation for Probate purposes is required to be made.**—Under the Commonwealth Statute and the Statutes of all the States except New South Wales, the value of an estate for purposes of payment of Duty is taken as at the date of death of the testator. In New South Wales the valuation is required to be made as at the date of grant of Probate.

990. There is sometimes a considerable interval of time between the death of a testator and the grant of Probate, and as, for the purposes of the Commonwealth Duty, the executors are required to have valuations made as at the date of death of the testator, the requirement of the New South Wales Law operates to cause considerable additional expense and inconvenience, as a second valuation is often necessary. Complaint was made by witnesses, particularly witnesses representing Trustee Companies, of the hardship so caused. Those witnesses were unable to suggest any reason for the lack of concordance of the New South Wales Law on this point with all other Estate Duty Laws in Australia.

991. **We are unaware of any objection to the adoption of the course followed by the other States and by the Commonwealth, and bring the matter under notice in the hope that it may receive consideration by the proper Authorities.**

992. **Valuations made for One Authority—Acceptance by Another Authority.**—It was strongly urged by witnesses that a valuation for Probate which has been accepted by one Authority (either Commonwealth or State) should also be accepted by the other. Instances were given where valuations made on behalf of the State and on behalf of the Commonwealth differed considerably. As the State Probate Duty is invariably paid first, and the Commonwealth, in some States at least, accepts State valuations of **personal** property, **it would seem that State valuations of real property should also be accepted,** thus avoiding the anomaly complained of *(See paragraph 1027.)

993. **Grant of Probate—Practice in States not uniform.**—It was represented to us that, in one detail affecting convenience and expense, the practice in regard to the Grant of Probate is not uniform in the various States. For example, in one State the Affidavits in regard to Probate are lodged with the Registrar, who deals with the matter at the minimum of cost and in due course issues the Probate, while in an adjoining State it is necessary to employ Counsel to appear before the Probate Judge and move for the grant of Probate.

994. **In our opinion, the simplest and least expensive method which is found practicable should, in the interests of the community, be generally adopted.**

995. **Re-Sealing of Probates.**—Complaint was made by a number of witnesses of the large expense caused in obtaining a re-seal of Probate in States other than the State in which Probate is granted. Instances were given by way of illustration—for example, in one case where Probate was obtained in Victoria, the testator had possessed 100 shares in a Public Company in South Australia, the gross value of the asset being **£67 10s. 0d.** The cost of re-sealing the Probate to enable the Executor to transfer the asset was **£20.** In another case, in respect of shares worth **£150** in a Company registered outside the State in which Probate was obtained, the cost to the Executor was over **£40.**

It is, in our opinion, very desirable that such expenses should be reduced to a minimum.

996. In our Second Report, paragraph 249, we recommended, as part of a permanent scheme for the allocation of direct subjects of taxation between the Commonwealth and the States, that the power to impose Probate or Succession Duties should be exclusively vested in the States. **Assuming that such an allocation be made, it would, in our opinion, be of the greatest value to the Australian community if the States agreed upon a uniform Act, and also if each State accepted the values shown on the Probate granted by any other State, subject only to a simple and inexpensive form of registration.**

997. **Taxation Dependent upon the Location of Documents of Title.**—In the case of documents of title such as Mortgages, Scrip, &c., the amount of Estate Duty payable under existing State Laws may depend upon the physical location of the documents at the date of the testator's death. For example, if the Mortgage Deed of property situated in New South Wales is in Victoria at the time of the testator's death, Duty is payable in both States. This also applies in the case of Scrip and similar documents. This dual taxation has been the subject of serious complaint by witnesses during our inquiry, and has been the subject also of adverse comment by economists, in relation to a similar practice in the United States.

In our opinion, action should be taken to prevent double taxation of this kind.

998. **In the case of a Mortgage Deed, the location of the land within a particular jurisdiction should, we think, as between one State and another, be decisive upon the question of the Authority to whom, and to whom only, Estate Duty should be paid.**

998A. **Another instance of Double Taxation under States' Legislation.**—Section 103 of the New South Wales Stamp Duties Act (No. 47 of 1920) provides that—

(1) The estate of a deceased person, whether domiciled at the time of his death in or out of New South Wales, shall also be deemed to include—

(*a*) . . . .

(*b*) every share and all stock held by such person at the time of his death in any company, corporation or society, whether registered or incorporated within or out of New South Wales, and carrying on the business of mining for gold or other minerals as defined in the *Mining Act* 1906 in New South Wales, or of treating any such minerals, or the business of pastoral or agricultural production or timber-getting in New South Wales;

(*c*) every share held by such person in any corporation, company or society having a share register in New South Wales for any purpose whatever.

998B. Section 4 of the New South Wales *Companies* (*Death Duties*) *Act* 1901 makes it obligatory, under penalty, for every company incorporated outside New South Wales which carries on the business—

(*a*) of mining for any minerals in New South Wales; or

(*b*) of pastoral or agricultural production or timber-getting in New South Wales,

to make application to the Registrar for registration of an office of the company in New South Wales. In the event of the death of a member of any such company, the company is required by Section 7 of the same Act (which provides a penalty for non-compliance), within six months from the day when the probate or letters of administration are notified to or lodged with the company, to furnish to the Registrar a return giving the name and address of such member, and other particulars, including the number, description, and value of the shares held by such member at the time of his death.

998C. Estate Duty on such shares is made payable by the company, which may deduct the amount so paid from any moneys payable by the company to the personal representatives of the deceased member in respect of the shares or stock, or may recover the amount by suit or action from such representatives. In such cases, and in cases arising out of Section 103 (1) (*c*) above cited; if the ownership of the shares was in (say) Victoria, the interest would be liable to taxation in that State also.

998D. The Queensland *Succession and Probate Duties Act* 1892 *Amendment Act of* 1895 has similar provisions to those of the New South Wales Act, in cases where share or other interests of a company incorporated in Queensland appear in a branch register (outside Queensland) of the company. Those provisions are applicable "although the testator or intestate may not have had his domicile in Queensland . . . . ."

998E. Legislative provisions such as those above cited entail a form of double taxation which appears to us to be devoid of justification. It is necessarily very unequal in its incidence; it is regarded by taxpayers as unjust, and appears as an arbitrary exercise of State power which is rendered possible by the existence of special and statutory forms of property.

We recommend that action be taken to prevent double taxation of this kind.

SECTION XLVI.

COMMENTS ON VARIOUS SECTIONS OF THE COMMONWEALTH ACT.

999. **Section 3 (Definition Section)**—

> "**Administrator**" means any executor to whom probate of a will is granted, or any person to whom letters of administration, with or without a will annexed, is granted, and also any person who, by virtue of any administration, becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person:

A departmental suggestion was submitted to us that the definition be amended by the addition of the words:—

> "and includes any person who takes possession of or intermeddles with the property of a deceased person and any person required by the Commissioner to furnish a return in respect of property received by him from a deceased person within one year before the death of that person."

In his Seventh Annual Report the Commissioner of Taxation explains the necessity for the proposed amendment thus:—

> "In the administration of the Act it has been found that the definition of 'administrator' is not wide enough to cover all the persons who may have charge or possession of the estate of a deceased person. It does not extend to persons who have received gifts of property from the testator within twelve months prior to his death, although such property forms part of the dutiable estate of the deceased. It would not cover the case of a person who took upon himself to administer any part of the deceased's estate without authority to do so.
>
> The Act at present only requires an administrator, as therein defined, to lodge returns under the Act. As stated above, certain persons who may have taken control of portions of the estate of the deceased are not regarded as administrators, and are, therefore, not bound by the obligations laid on administrators by the Act.
>
> Any person who has taken control of any part of the deceased's estate is *de facto* an administrator, and he should be bound by the same obligations as an administrator.
>
> It is considered that the definition of 'administrator' should be extended to cover these persons, so that an assessment for duty in respect of the estate handled by them can be made against them."

Without comment upon the verbal form of the proposed amendment, which no doubt will be revised, **we consider the suggestion a reasonable one and recommend its acceptance**, except as to the specified period before decease, which will (if our recommendation in respect of Section 8 (4) (*a*) be adopted) become two years instead of one.

1000. **"Debts"** includes probate and succession duties payable under any State Act, but does not include voluntary debts:

This definition should be read in conjunction with Sections 17 and 18, which, as amended in October, 1922, by the addition of the words underlined, now read respectively:—

> 17. For the purpose of assessing the value for duty of the estate of any person dying after the commencement of this Act, all debts due and owing by the deceased at the time of his death and Federal and State Land and Income Taxes which become due and payable after his death and within one year after the payment of duty on any assessment under this Act, shall be deducted from the gross value of the assessable estate if the deceased was at the time of his death domiciled in Australia.
>
> 18. If the deceased was at the time of his death not domiciled in Australia the debts which may be deducted from the gross value of the assessable estate shall be debts due and owing to persons resident in Australia, or contracted to be paid in Australia, or charged on property situate in Australia, and Federal and State Land and Income Taxes due and payable at the time of his death or which become due and payable after his death and within one year after the payment of duty on any assessment under this Act.

The Commonwealth Commissioner of Taxation informed us that it is proposed to amend the present definition of "Debts" so as to limit the deductions allowed in respect of Probate and Succession Duties payable under any State Act to Duties paid on the estate dutiable under the Commonwealth Act.

We concur in that proposal.

1001. **Secrecy to be imposed on Departmental Officers.** *The Income Tax Assessment Act* 1915 18 provides that every officer shall make a declaration of secrecy before entering upon his official duties or executing any power or duty conferred or imposed on him under the Act, and imposes a maximum penalty of Two hundred and fifty pounds upon any officer who makes a record of or divulges any information relating to the affairs of a person except in the performance of his duty under the Act.

1002. In our Fourth Report (paragraphs 737 and 738) we commented upon the absence of any such provision from the Land Tax Assessment Act. We expressed the opinion that, with the exception of the official valuation only of separate parcels of land (which would be available for public information if independent State Valuation Bureaux were established), it is desirable that taxpayers' affairs with regard to Land Tax be treated confidentially, as in the case of Income Tax, and recommended the amendment of the Land Tax Assessment Act accordingly.

1003. In recommending the inclusion of secrecy provisions in the Estate Duty Assessment Act, the Commissioner of Taxation pointed out that recent prosecutions by the Department had emphasized the necessity of having suitable secrecy provisions in all Acts administered by him. In his opinion, such provisions would not only be in the interests of office discipline, but would assist in protecting taxpayers from exploitation.

1004. **We recommend that the Act be amended**—

(1) To include suitable provisions enforcing the obligation of secrecy upon officers in all matters relating to the affairs of an estate.

(2) To provide for the supply of information to other Commonwealth Departments (if required for any public purpose) and to State Taxation authorities. (Section 13 of the Act already provides for the making of arrangements with State Taxation authorities for the supply by them of information to the Commonwealth Commissioner).

1005. **Section 8, Sub-section (3)**(*a*) reads:—

> (3.) For the purposes of this Act the estate of a deceased person comprises—
>
> (*a*) his real property in Australia (including real property over which he had a general power of appointment, exercised by his will);

This sub-section provides that property over which a deceased person had a **general** power of appointment which he has exercised by his Will shall form part of his dutiable estate. This is a common provision in Estate Duty Acts. The Commissioner of Taxation has suggested an amendment of the Sub-section to include property in which the deceased person had a beneficial interest together with a **limited** power of appointment exercisable by will.

We are not satisfied that the suggested amendment to include a limited power of appointment can be justified, unless possibly from a Revenue point of view, that is, in order to prevent some apparent, but not real limitation being placed upon a general power of appointment in order to avoid Duty. A limited power of appointment may of course be a power which can be exercised only in a direction entirely contrary to the desires of the donee of the power. There is also the possibility from the Revenue point of view (this difficulty is the converse of the one mentioned above) that, if a property over which a testator had a limited power of appointment is made dutiable, the limits may be so wide that the power will be almost, if not quite, as valuable as a general power of appointment. The question whether a deceased person having a limited power of appointment had also a beneficial interest in the property to be appointed cannot, we think, be regarded as a determining factor. The South Australian *Succession Duties Act* 1893 contains in Section 9 a provision requiring the administrator to include in the statement to be supplied to the Registrar:—

> "The net present value of any property given to an uncertain person, or on an uncertain event, including property over which a special power of appointment is given, such value to be estimated as if such property had been given by way of vested remainder to a certain person."

1006. The British *Succession Duty Act* 1853 has a provision (Section 4) making dutiable as a "succession" any property passing as the result of the exercise of a limited power of appointment. **From the point of view of an Estate Duty Act such as that of the Commonwealth, we are unable to recommend the inclusion of such a provision, although in our opinion it would not be out of place in an Act imposing a Succession Duty upon the basis which we recommend (paragraph 887).**

1007. **Section 8, Sub-section (4)** reads :—

(4) Property

(*a*) which passed from the deceased person by any gift *inter vivos* or settlement made before or after the commencement of this Act within one year before his decease, or, being property comprised in a settlement under which he was tenant for life, the life interest of which was surrendered by him to the remaindermen within one year before his decease ; or

(*b*) in which he had a beneficial interest at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person,

shall for the purposes of this Act be deemed to be part of the estate of the person so deceased.

The Commissioner of Taxation has suggested an amendment of these Sub-sections. Under Sub-section (4) (*a*), Duty is levied in case of surrender within one year of death on the total value of any property which is the subject of a life interest held by the testator, whether such life interest was created by the testator or not. **It is proposed to amend Sub-clause** (*a*) by inserting after the word " settlement " in the fourth line the words :—

" or agreement made by him or by him and some other person jointly."

This would be in accordance with the provisions of the British Succession Duty Act and the Victorian *Administration and Probate Act* 1915.

We recommend that the Act be so amended.

1007A.—The period, one year before decease, specified in Sub-Section (4) (*a*) is the same as that specified in the Acts of Victoria and South Australia. In New South Wales and Tasmania, the period is three years, in Queensland, two years, and in Western Australia, six months.

We recommend that a period of two years be adopted, and that the Commonwealth Act be amended accordingly.

1008. **It is also proposed to amend Sub-clause** (*b*) to provide for the payment of Duty on all life interests held by the testator and created by himself, whether held by him at the date of death or surrendered within the period prescribed within which gifts *inter vivos* are rendered dutiable. The necessity for some such amendment is illustrated by a case which arose where a person settled on himself for life certain property with remainder to his daughter. On his decease the Department sought to include this property in his taxable estate, on the ground that it came within the terms of Section 8 (4) (*b*) of the Act as being property in which the deceased had at his death a beneficial interest, which devolved upon another person. The Commissioner was advised that the Departmental claim could not be maintained, as by the settlement made during his lifetime the testator had created two interests, his own life interest and the absolute interest of his daughter. Upon the settlor's death, no interest passed to the daughter. It was simply a case of one interest ceasing and another independent interest arising in possession.

1009. **We endorse the Commissioner's suggestion and recommend an amendment of Section 8 (4) (b)** to provide for payment of Duty on all life interests held by a testator and created by himself whether held by him at the date of death or surrendered within the period prescribed within which gifts *inter vivos* are rendered dutiable.

1010. A further addition to Sub-section (4) recommended by the Commissioner **is one to** provide for the taxation of property which was taken by the donee under **gift, whenever made by the deceased as donor, of which bona fide possession and enjoyment was not assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.** The words in heavy type in the preceding sentence indicate the amendment proposed. This provision originated with the English *Estate Duty Act* 1894, Section 2, and appears also in the Victorian *Administration and Probate Act* 1915. An illustrative case which arose under the latter Act was one in which a testatrix twelve months before her death had given to her three sons portions of the land owned and worked by her, each portion being surrounded by other land of the testatrix. Upon the same day upon which the land was so transferred, each of the sons executed a lease to the testatrix for five years of the land given to him, a fair and reasonable rent being reserved. After the gifts, the lands given continued to be in the actual physical occupation of the testatrix and to be worked by her with her other lands in the same way as before the gifts. In that case it was held that the land so given was chargeable with the Duty payable under the Victorian Act as though part of the estate of the testatrix. (Lang *v.* Webb, 13 C.L.R. 503). The object of the proposed amendment of the Sub-section is to protect the revenue against arrangements to defeat the Act by colorable transactions.

We approve of the principle of the suggestion, and recommend amendment of the Act accordingly.

1011. The Commissioner of Taxation **suggests the insertion in Sub-section (4) of a provision** under which interest **receivable** from money on deposit shall be deemed to accrue from day to day and interest accrued to the date of death of a testator or person dying intestate shall form part of his estate.

We concur in the suggestion and recommend amendment of the Act accordingly.

1012. **If this amendment be adopted,** it should also be made clear that interest **payable** up to the date of death shall be deductible from the gross value of the estate as a debt.

1013. **Section 8, Sub-section (5)** reads :—

(5.) Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes.

The Commissioner of Taxation suggests that this Sub-section be amended by adding at the end the words " within Australia ", the effect of which will be to subject to tax any part of the estate of the deceased person which passes to a religious, scientific, charitable or public educational body **outside Australia.** The question whether this result could be attained under the Section as it stands was argued before the High Court in the case of Jackson and Another, Appellants, and the Federal Commissioner of Taxation, Respondent (27 C.L.R., 503). In that case it was held by the majority of the Court (Knox, C.J., Isaacs and Starke, *J. J.*—Rich, *J.*, dissenting) that the exemption given by the Sub-section in favour of devises, &c., for charitable purposes is not limited to such charitable purposes as have operation in Australia, but extends also to charitable purposes which are being carried out abroad. The Commissioner informs us that the restriction to charitable and other purposes **within Australia** was undoubtedly intended.

In our opinion, this is a reasonable restriction, and we recommend amendment of the Act to make that restriction operative.

1014. **Section 8, Sub-section (6.)** reads :—

(6.) In respect of so much of the estate as by will intestacy gift *inter vivos* or settlement passes to the widow or children or grandchildren of the deceased estate duty shall be assessed and payable at two-thirds of the rate which would otherwise be payable.

The Commissioner of Taxation suggests an amendment of this Sub-section to provide that the reduced rate payable in respect of so much of the estate as passes to the widow, children or grandchildren of the deceased shall not apply in cases where the benefit taken by those relatives of the deceased does not accrue to them immediately, but only after the interposition of a prior terminable interest. The question arose in Victoria in the case of *In re* Davidson (23 A.L.R., 415), in which Mr. Justice Cussen ruled that the privilege granted by the Sub-section to the widow, children or grandchildren by the reduction in the rate of Duty payable in respect of their interests should not be lost, even though a prior estate was interposed before their enjoyment began. The Commissioner's suggestion that this privilege as to Duty should be withdrawn where any prior interest intervenes, so that after the termination of such intervening interest the widow's share should be lessened by the full rate of Estate Duty, does not command our sympathy. It appears to us clear that the Parliament intended that full rates should not be charged in respect of the interest of a widow, child or grandchild, and if, for any reason, the beneficial enjoyment of an estate by any of these persons is deferred, that in our opinion is not a sufficient reason for making a further inroad by taxation upon their interest.

In this case, we recommend that any privilege as to rates accorded to near relations be not affected by the interposition of a prior estate.

1015. **The Commissioner of Taxation further suggests** that the privilege as to a lower rate of Duty should apply only where the privileged person (widow, child or grandchild) is at the date of death of the testator domiciled within Australia. **This suggestion also fails to commend itself to us. In our opinion the test should be family relationship.** Domicile outside Australia at the material date may have arisen not from choice, but from circumstances outside the control of the parties affected, and we do not think that they should be deprived of the privilege now afforded by the Act.

1016. **Other questions** arise in connexion with the consideration of affording privilege in respect of tax to persons holding certain relationship to the deceased. **For example, there may be considered the case of adopted children.** In some State Acts there are provisions under which a child who has been adopted with the formalities prescribed by a Statute dealing with the matter is deemed for the purposes of Estate or Succession Duty to be a child of the person whose estate is subject to Duty. It seems to us that this is a reasonable provision. Most frequently adoption, in accordance with such a provision, takes place in the case of married couples who have no children of their own, or who, if they have children, adopt others who have some degree of relationship to

them or are the children of intimate friends. Whether in those circumstances or otherwise, there is an assumption of parental responsibility towards the child so adopted, and a compliance with the law governing adoption, which, in our opinion, justify placing the adopted child, for the purpose of preference, in the same position as a child born of the marriage of the adoptive parents.

We recommend, therefore, that, where a child has been adopted in compliance with the formalities in any State Law, such child should be regarded for the purpose of Estate Duty as coming within the privileged class.

1017. **Another case is that of illegitimate children.** The question as to how illegitimate children should be treated for purposes of Estate or Succession Duty has been debated in Great Britain at intervals, and often with strong feeling, for more than 100 years, and private members have more than once attempted to secure the passage of Bills to assimilate the rates of Legacy and Succession Duty in the case of illegitimate children to the rates affecting legitimate children, but so far without success, the position still being that an illegitimate child is for the purposes of Estate Duty treated as a stranger in blood and taxable at the highest rate. In Hanson's "Death Duties," page 667, after quoting various cases, it is said :—

> It would seem, therefore, that legitimated children are not "strangers in blood", but pay Succession Duty at the same rate as if they had been originally legitimate. But it appears to be otherwise when the children, though acknowledged by the father as his natural children, are not legitimated. (Atkinson *v.* Anderson, 21 Ch. D. 100).

In New Zealand, the *Death Duties Act* 1909, Section 19, provides

> For the purposes of Succession Duty illegitimate relationship shall be recognised as equivalent to legitimate relationship in all cases in which the successor is entitled, on the intestacy of the deceased, to succeed by virtue of that illegitimate relationship to any part of the estate of the deceased, or would have been so entitled if the deceased had died intestate.

In Tasmania the *Deceased Persons Estates Duties Act* 1915, Schedule (2), Part II., provides that :—

> Where the person taking the property is an illegitimate child of the deceased person or of the settlor or donor or of any person making any such instrument, the Duty in respect of the property so taken shall be charged at the same rate as if such child were legitimate.

1018. We are informed that in all the States Acts have been passed providing that, in the case of illegitimate children, subsequent marriage of the parents has the effect of legitimating the children. For purposes of State Estate or Succession Duties, presumably no question arises where a subsequent marriage of the parents has occurred, but the question of illegitimate children whose parents have not married is left open except in Tasmania. It will be seen from the provision quoted from the Tasmanian Act that, so far as Estate Duty is concerned, the question of whether there has or has not been a subsequent marriage of the parents is not taken into account in that State in determining the status of the child.

1019. **We recommend adoption of a provision similar to that in force in Tasmania.**

1020. **Another relationship which may be considered is that of a widower.** In Great Britain and also in South Australia and Western Australia, a widower is for purposes of Death Duties placed in the same category as a widow. The Victorian Act makes a similar provision where the benefit to a widower has arisen as the result of a settlement, but apparently not where it arises under a Will. **In our opinion, it is reasonable that a surviving husband or wife should be treated in the same way for purposes of Estate Duty.**

1021. **Section 8, Sub-section (7.)** reads :—

> (7.) All duties lawfully paid in any place outside Australia, in respect of any part of the estate situate outside Australia, may be deducted from the duty to which the estate is liable under this Act.

The Commissioner of Taxation points out that it has sometimes happened that the Duty payable outside Australia in respect of part of the estate which is assessable inside Australia has exceeded the proportion of the Australian Duty which is attributable to that part of the estate. In some cases, under the Act as it stands, the result has been that the allowances in respect of the Duty paid outside Australia have entirely wiped out the Duty assessable in Australia on the whole estate, and thus exempted the estate from Australian Duty. The Commissioner suggests "that the law should be amended so as to limit the deduction in such cases to the proportion of the Duty payable in Australia or outside Australia (which is applicable to the doubly taxed part), whichever of the two is the less."

We endorse that suggestion and recommend a consequent amendment of the Act.

1022. The Commissioner of Taxation suggests **a further amendment** by the insertion after Section 8 of a provision **to meet cases in which transfers for valuable consideration have been made by the testator within one year of his death, but in which the consideration is less than the true market value.** The present definition of "gift *inter vivos*" excludes transactions in favour of *bonâ fide* purchasers for valuable consideration. Nothing, however, is said as to the **adequacy** of the consideration. In some State Acts, provision is made for treating the difference between the consideration actually paid in such cases and what is deemed to be adequate consideration as part of the taxable estate. The suggestion of the Commissioner is that a similar provision should be inserted in the Commonwealth Act.

1023. **We support that suggestion and recommend insertion of a suitable provision,** subject to our recommendation (paragraph 1007 A) for substitution of a period of two years in lieu of the present period of one year.

1024. While approving of the principle of the suggested provision, we are of opinion that the question of the adequacy or otherwise of consideration paid in such cases is one upon which **a taxpayer should have the right of appeal from the Commissioner's decision to the Board of Appeal.** (See section of this Report headed "Board of Appeal").

1025. **Section 10 (1.)** reads :—

> 10.—(1.) For the purpose of assessment and levy of estate duty every administrator shall, except as prescribed, within the prescribed period, prepare and furnish in the prescribed form and at the prescribed place a statement setting forth a full and complete return of all the estate in Australia of the deceased person in respect of whose estate he is the administrator.

The Commissioner of Taxation suggests the omission from this Sub-section of the words "in Australia". The effect of the omission of those words would be to place upon the administrator the duty of furnishing a statement showing the whole of the estate of the deceased person. This might in many cases include, for example, real property outside Australia, and in this respect seems to us to go too far. By common consent of civilized nations, the taxation of real property is governed by the Laws of the country in which the property is situated.

In our opinion, it should be sufficient if the return to be furnished by an administrator comprise what is required by Section 8, Sub-section (3.).

1026. **Section 11** reads :—

> 11. The Commissioner may require such further or other returns as he deems necessary for the full and complete assessment and collection of the duty assessable under this Act, and may permit the administrator or other person interested to make alterations in any return lodged, upon the Commissioner being satisfied as to the necessity for the alteration.

The Commissioner of Taxation **suggests that this Section be amended** by omitting the words "such further or other returns" and inserting the words "any person to furnish such returns". At present, under Section 10, returns can be required only from any person who comes within the definition of the term "administrator", and this has been found too narrow for effective administration. (See paragraph 999). The Commissioner in evidence said, in explanation :—

> The idea of the proposed amendment is that there should be power to call upon any person for a return if that person has control of any part of the estate which would be dutiable. It is not intended to require an accountant or solicitor who had had to do with an estate to furnish returns, because they may not be in a position to do so. Several cases have happened which have driven us into this position. Persons have given away the whole of their estate within a very few months of their death. In two cases we had, I think, the estate was divided absolutely amongst the members of the family, and there was nothing left to put into any testamentary document. There was no executor or administrator. We had nobody from whom we could get a return. It was a dutiable estate only because of the gifts having taken place within the time limit of one year. There was nobody responsible for making a return.

We recommend the proposed amendment of the Section.

A consequential amendment of Section 12 will be required.

1027. **Section 14** reads :—

> 14. In assessing duty in accordance with this Act, the Commissioner may if he thinks fit adopt, as far as it extends, the value of dutiable estate as assessed for duty under a State law in respect of the same estate.

This Section enables the Commissioner to adopt as far as it extends the value of dutiable estate as assessed for Duty under a State Law. The evidence shows that this provision is availed of by the Commonwealth Department with regard to the value of **personal** estate, but with regard to **real** estate the Commonwealth relies upon valuations made by its officers for the purposes of Land Tax. In this connexion, attention is invited to paragraph 706 (Fourth Report). The Commissioner informs us that in some States the Commonwealth valuation of lands is used by the States for the purposes of Estate Duty. If arrangements be made for the Commonwealth to adopt valuations of land by State Authorities for the purposes of the Land Tax Assessment Act, we assume that the State valuations would be adopted also for the purposes of any Estate or Succession Duty Assessment Act. (See paragraph 992).

1028. **Section 16** reads :—

16.—If—

(*a*) any administrator makes default in furnishing any return ; or
(*b*) the Commissioner is not satified with the return made by any administrator ; or
(*c*) the Commissioner has reason to believe that any estate (though no return has been furnished) is dutiable,

the Commissioner may make an assessment of the amount on which, in his judgment, duty ought to be levied, and the estate shall be liable to duty thereon, except so far as the amount is, on appeal, shown to be excessive.

The Commissioner of Taxation suggests certain amendments of this Section, partly consequential upon the proposed amendment of Section 11 and partly by substitution of the word " person " for the word " estate " in the clause near the end of the Section, where it is said :— " The **estate** shall be liable to Duty thereon except, &c." This proposed substitution, taken in conjunction with the proposed amendment of Section 11, and without explanation, left it open to be inferred that a person might be called upon to pay Duty who had no beneficial interest in the estate. The Commissioner informs us that is not the intention, but that liability to Duty will only rest upon a person who comes within the definition, as proposed to be amended, of the term " administrator ". The Act, however, seems to us to be somewhat defective on this point, and **we recommend that an amendment be made** for the purpose of declaring explicitly that an administrator shall be liable for payment of Duty to the extent only of the property or funds actually received or disposed of by him and available for that purpose. This is not an uncommon provision in similar Acts, and, in the Commonwealth Act, Section 20 (3.), the liability of an administrator for certain **additional** or **increased** Duty is definitely limited, except in cases of fraud or gross negligence, " to the extent of any property then under his control or which can be applied by him for payment of such Duty."

1029. **Section 17,** as amended by Act No. 34 of 1922 (for text of the Section, see paragraph 1000).

In connexion with a somewhat similar provision in the New South Wales Stamp Duties Act, particulars were supplied to the Commission of a case arising in that State of a person who died intestate in the year 1922. The facts, as stated by the solicitor who acted for the estate, are as follows :—

> At the time of his death, the Federal Assessment for Income Tax for the year ending 30th June, 1921 had not been received, but was issued in May this year (1922) and amounted to the sum of £2,500, in addition to which there will be a further assessment up to the date of his death, which will probably amount to another £1,000.
>
> There is also a State Income Tax of £47 18s. 7d., making a total of say £3,547 18s. 7d.
>
> I brought the case under the notice of the Colonial Treasurer, who referred it to the Stamp Commissioner. His reply is that the matter was referred to the Crown Solicitor, who supported his (the Commissioner's) contention that Federal and State Income Tax which has not been assessed before the date of the death is not a debt actually due and owing by a deceased at the time of his death, and consequently is not a debt for which allowance can be made in terms of Section 107 of the Stamp Duties Act.
>
> This view was supported by Mr. Langer Owen, on the ground that Section 41 of the *Federal Income Tax Assessment Act* 1915-18 states that "Income Tax, shall be due and payable 30 days after the service by post of a notice of assessment." Section 44 of the same Act states that Income Tax shall be deemed, when it becomes due and payable, to be a debt due to the King, &c."

It will be seen that reference is made both to the Federal assessment and also to the State assessment. Section 17, as indicated in paragraph 1000, was amended during the year 1922. It seems open to doubt whether the Section as amended will completely meet the complaint of the witness, and **we recommend that the matter be further considered with a view to making provision for adequate deduction in such a case,** if it be considered that the recent amendment would be inadequate in similar circumstances. ***It is in our opinion desirable also that the State Act be amended.*** (See also recommendation, paragraph 1056).

1030. **Section 18,** as amended by Act No. 34 of 1922 (for text of the Section as amended, see paragraph 1000).

If, in view of the facts stated above in reference to Section 17, **it be found necessary to amend that section, presumably a similar amendment of Section 18 will be made.**

1031. **Section 19** reads :—

> 19. Where in the opinion of the Commissioner any estate is of such a nature or is so disposed of or circumstanced that the value thereof is not fairly ascertainable under this Act, he may compound the duty on such property on such terms as he thinks fit, and may give a discharge to the administrator or to any other person interested in the property upon payment of the duty according to such composition.

In the case already cited (*In re* Davidson, 23 A.L.R., 415), Mr. Justice Cussen, after quoting Section 19, went on to say :—

> In such a case there would appear not to be an assessment strictly so-called either of value or of Duty, but possibly the Duty, after an agreement for composition, would be " payable." Perhaps the Section provides for cases of partial administration.

This judicial comment is brought under notice with a view to consideration of some suitable amendment of the Act.

1032. **Section 20** reads :—

> 20.—(1.) The Commissioner may, within one year after the last payment on account of duty on any assessment, make all such alterations in or additions to the assessment as he thinks necessary in order to insure its completeness and accuracy.
>
> (2.) Every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the administrator affected, and unless made with his consent shall be subject to appeal.
>
> (3.) An administrator shall only be liable for such additional or increased duty to the extent of any property then under his control or which can be applied by him for payment of such duty, unless it is owing to any fraud or gross negligence on his part that the proper amount of duty was not paid in the first instance, in which case he shall be personally liable for the additional or increased duty.
>
> (4.) If the alteration in any assessment made by the Commissioner under this section has the effect of reducing the duty payable on the estate, the Commissioner shall refund the duty which has been paid in excess of the amount payable on the altered assessment.

The Commissioner of Taxation has suggested an amendment of this Section so as to permit of the amendment of an assessment at any time, together with the collection at any time of Duty short-paid. It will be seen that the Section, as at present, fixes a limit of one year after the last payment on account of Duty on any assessment as the period within which the Commissioner may alter or add to an assessment. **We do not think it reasonable that the right of the Commissioner to amend assessments should in all cases be unlimited as to time.** In paragraph 546 of our Third Report, dealing with Income Tax, we recommended, in reference to a similar matter, that, where the issue of an amended assessment is due to the failure of a taxpayer to place the Department in possession of all the material facts upon which to base a complete assessment, no limitation of time be imposed upon the Department. In cases where the Department has from the beginning been placed in possession of all the information necessary for the compilation of a complete and accurate assessment, but has issued an imperfect assessment, we recommended that a limit of three years be imposed upon the Department as the period within which an amended assessment may be issued.

1033. **We recommend that, in these latter circumstances, a period of Two years from the date of the furnishing of the return by the administrator be fixed as the limit within which an additional or amended assessment may be made.**

1034. **We also recommend that the same period be fixed as that within which the taxpayer shall have the right to claim a refund.**

1035. To meet the case where, after the estate has been distributed, Duty is found to have been short-paid, the Commissioner suggests the insertion of a provision in the Act to authorize the collection of Duty short-paid from the beneficiaries to whom the property has been distributed. Some difficulties may occur in cases, for example, where beneficiaries are out of the jurisdiction, or where a trustee, after retaining money sufficient to pay the tax, has absconded. **The principle upon which the Commissioner's recommendation rests is, however, reasonable, and we recommend amendment of the Act to provide for the collection of short-paid Duty from the beneficiaries** to whom the Duty should have been apportioned by the administrator, in accordance with the directions (if any) of the Will, or otherwise as prescribed by Section 35.

1036. **Section 22** reads :—

> 22.—(1.) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—
>
> (*a*) be conclusive evidence of the due making of the assessment ; and
> (*b*) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *primâ facie* evidence only.
>
> (2.) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any return or assessment shall for all purposes be sufficient evidence of the matter therein set forth, without the production of the original.

The Commissioner of Taxation suggests amendment of this Section—

(*a*) by inserting in Sub-section (1.) thereof after the words " production of any " the words " notice of " ;
(*b*) by inserting in Sub-section (1.) thereof after the word " Commissioner " the words " Assistant Commissioner or a Deputy Commissioner " ;

(*c*) by omitting from Sub-section (1.) thereof the words "copy of an assessment" and inserting in their stead the words "copy of a notice of assessment";

(*d*) by inserting in Sub-section (2.) thereof after the word "Commissioner" the words "Assistant Commissioner or a Deputy Commissioner"; and

(*e*) by inserting in Sub-section (2.) thereof after the words "from any return or" the words "notice of".

The amendments so suggested are, in our opinion, desirable, and will bring the Act into line with the Income Tax Assessment Act, and with our recommendation, paragraph 761, Fourth Report, relating to the Land Tax Assessment Act.

We recommend that the amendments above indicated be included in the Act.

1037. **Section 24.** If our recommendations with regard to Board of Appeal (page 247 of this Report) be adopted, this section will need to be re-cast.

1038. **Section 24 (8)** reads :—

(8.) Notwithstanding anything contained in this section, where the assessment made by the Commissioner is based solely upon assessments made under the law of a State, an appeal shall not lie from such assessment unless an appeal has been made from the State assessment upon which the assessment under this Act is based.

The Commissioner suggested an amendment of this Sub-section to provide for its application to cases where the Commonwealth assessment is based **partially** upon an assessment made under the Law of a State; the prohibition against appeal to apply in that case to that part only of the assessment which is based on a State assessment.

1039. **In our opinion, the Sub-section should not be amended, but should be repealed, for the following reasons :—**

(1.) That any relations existing between two independent taxing authorities should not affect any taxpayer's rights of appeal against the decision of either.

(2.) That, where a taxpayer becomes unable to proceed by way of appeal against the State assessment, owing to some accidental delay in giving notice, he should not be thereby deprived of his right of appeal against the assessment of a different authority.

(3.) That if, as we recommend in this Report, a taxpayer under the Commonwealth Act be given a right of appeal to a Board of Appeal, it is very undesirable that he should be deprived of that right in consequence of something that occurred between him and a State authority.

(4.) That, as at present State rates are generally much higher than those of the Commonwealth, it is unlikely that a taxpayer will fail to appeal against a State assessment if he thinks he has good grounds for such an appeal.

It has been suggested that, if the Sub-section be omitted, the omission might lead the Commonwealth Department to incur further expenditure upon staff in order to value through their own officers personal property in the estates of deceased persons, in lieu of accepting as at present the State valuations for such property. It does not seem to us necessary or desirable that such a result should follow, as State valuing officers would no doubt be available as witnesses, if required, in support of the valuations made by them and adopted by the Commonwealth Department.

1040. **Section 25** reads :—

(1) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from; and duty may be levied and recovered on the assessment as if no appeal were pending.

(2) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable as arrears.

This Section corresponds with Section 39 of the Commonwealth Income Tax Assessment Act and with Section 45 of the Commonwealth Land Tax Assessment Act.

1041. The Section provides that, where an administrator has given notice of appeal against an assessment, Duty may be levied and recovered as if no appeal were pending. It may frequently occur that, from causes entirely beyond the control of the taxpayer, considerable time may elapse between the giving of the Commissioner's decision on an objection and the hearing by the Court of an appeal against that decision. It may also happen that Duty amounting to a considerable sum has been paid within the thirty days after the service by post of the notice of

the original assessment, as required by Section 29 of the Act, and that the Court on appeal may alter the assessment in the taxpayer's favour. While Section 25 provides that in such a case the amount of Duty found to have been paid in excess shall be refunded, there is no provision for the payment by the Department of interest upon the Duty paid in excess.

1041. In paragraphs 818, 819, and 820 we discussed a similar position arising under the Land Tax Assessment Act, and are of opinion that the provision there recommended should be included in the Estate Duty Assessment Act or in any Succession Duty Act which may replace that Act.

We therefore recommend that it be provided that a taxpayer, when lodging an objection, should be required to pay tax upon the amount which he admits is taxable, or 75 per cent. of the tax assessed, whichever is the greater.

We are also of opinion that the procedure recommended in paragraph 820 in respect of the Land Tax Assessment Act should be followed in respect of an Estate or Succession Duty Assessment Act.

1043. It may further be pointed out that there is sometimes considerable delay in the giving of the Commissioner's decision upon an administrator's objection. We are officially informed that delay is often occasioned by the peculiar difficulties raised by the objection, and that in such cases the discretionary power of the Commissioner or Deputy Commissioner to extend the time for payment of Duty is frequently exercised.

1044. **Sections 25 to 28.** Some consequential amendments of these Sections will be required if provisions be inserted to enable taxpayers dissatisfied with the Commissioner's decision to appeal, not only to a Court, but to the Board of Appeal. (See "Board of Appeal," page 247.)

1045. **Section 31,** as amended by Act No. 34 of 1922, reads :—

31. If the duty is not paid as provided by section twenty-nine of this Act or such further time as is provided by section thirty of this Act, additional duty amounting to ten per centum of the duty unpaid shall be payable in addition by way of penalty.

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional duty imposed by way of penalty or any part thereof.

In our Reports with regard to Income Tax and also with regard to Land Tax, in dealing with a similar provision, **we have recommended that the penalty Duty of 10 per cent. be altered to 10 per cent. per annum.**

We recommend a similar amendment of the Estate Duty Assessment Act.

1046. **Section 35** reads :—

35. Subject to any different disposition made by a testator in his will, the duty payable in respect of an estate, exclusive of so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious scientific charitable or public educational purposes, shall be apportioned by the administrator among the persons beneficially entitled to the estate in the following manner :—

(*a*) The duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests; and

(*b*) where there are any beneficiaries under the will each of whom takes only specific bequests or devises of a value not exceeding Two hundred pounds, the duty which under paragraph (*a*) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests.

Provided that for the purposes of this section the value of the interests of the widow or children or grandchildren of the deceased shall be reckoned at two-thirds of their assessed value.

This Section was discussed at length by Mr. Justice Cussen in the case of *In re* Davidson, already cited, paragraph 1014. The difficulties of the Section pointed out by Mr. Justice Cussen may perhaps be partly due, as he suggests, to the fact that :—

Instead of an elaborate set of provisions in which an endeavour is made to provide for various cases, an attempt is made to state the matter in a few words.

We suggest that the Judgment in the case in question be considered, with a view to amendment of the Act.

1047. With regard to the Section generally, it may, however, be pointed out that, if our basic recommendation for a change in the scheme of the Act by the substitution of a Succession Duty for an Estate Duty be adopted, the necessity for the Section will disappear.

1048. **Section 37.**—The Commissioner of Taxation has suggested an addition to this Section, the effect of which would be to prevent the Registrar-General or other proper officer of a State from removing the charge from the register until he had received a certificate from the Commissioner, certifying not only that arrears of Duty had been paid, but also that all costs of the charge had been met. We understand that the costs are only small fees payable under the State Acts. If it be thought necessary to amend the Act for the purpose of enacting explicitly (what now seems

implicit in the Section) that the Registrar shall not remove the charge from the Register until he has received a certificate from the Commissioner that arrears of Duty have been paid, we see no objection to inclusion of a requirement that the certificate should cover also payment of costs, by which we mean the State fees payable by the Commonwealth.

1049. **Section 44** reads :-

> 44. The Commissioner, or any officer authorized by him on that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title, for the purpose of valuing or inspecting any estate or of ascertaining the ownership thereof and for any of these purposes may make extracts from or copies of any such books, documents or papers.

The Commissioner of Taxation suggests the amendment of this Section to enable the notice in writing to be given, not only by the Commissioner, but also by the Assistant Commissioner or a Deputy Commissioner, and also to widen the scope of the Section by extending the powers it confers to any of the purposes of this Act.

We endorse these administrative suggestions and recommend amendment of the Act accordingly.

1050. **Section 45** reads :—

> 45.—(1.) The Commissioner may by notice in writing require any person to attend and give evidence before him or before any officer authorized by him in that behalf concerning any estate or assessment, and to produce all books, documents and other papers whatever in his custody or under his control relating thereto.
>
> (2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he, or the officer so authorized by him, may administer an oath.

The Commissioner of Taxation suggests amendment to enable him to require any person, whether a taxpayer or not, to furnish him with such information as he may require, and to attend and give evidence, &c., as in the Section.

We recommend the suggested amendment.

1051. **Section 47** reads :—

> 47. Any person who—
>
> (*a*) fails or neglects to duly furnish any return as and when required by this Act or the Regulations or by the Commissioner ; or
>
> (*b*) without just cause shown by him refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him, or to produce any book, document or papers required of him by the Commissioner or any such officer ; or
>
> (*c*) knowingly and wilfully makes or delivers any false return, or makes any false answer, whether verbally or in writing, in relation to any matter or thing affecting the liability to or exemption from assessment under this Act of any estate ;
>
> shall be guilty of an offence.
>
> Penalty : One hundred pounds.

The Commissioner of Taxation proposes an amendment of Sub-clause (*c*) of this Section by the omission of the words "knowingly and wilfully". This would bring the Section into line with a similar provision of the *Income Tax Assessment Act* 1922. A further suggestion of the Commissioner is to provide that the penalty shall not be less than £2 nor more than £100. **In view of the considerable amounts generally involved in Estate Duty assessmen s, we see no objection to this minimum penalty.**

1052. Further amendments proposed by the Commissioner by way of addition to Section 47 are as follows :—

> (2.) A prosecution for an offence against paragraph (*a*) or (*c*) of Sub-section (1) of this Section may be commenced at any time.

The proposed Sub-section (2.) is identical with Section 66 (2.) of the *Income Tax Assessment Act* 1922. **We see no objection to this provision.**

1053. A proposed Sub-section (3.) is similar to Sub-section (3.), Section 66 of the *Income Tax Assessment Act* 1922, but the latter provision refers to a further Section in which the punishment is a pecuniary penalty. **We see no objection to this proposed amendment, subject to the adoption of our recommendation with regard to the amendment of Section 43.**

1054. A proposed Sub-section (4.) is identical with the provision in the *Income Tax Assessment Act* 1922, Section 66 (4.), and is in our opinion a proper limitation upon the operation of Section 47 (*c*).

1055. The Commissioner of Taxation suggests the insertion of a new Section, to read as follows :—

> 47A. Notwithstanding anything contained in the preceding Section, any person who—
>
> (*a*) fails to include any assets in any return ; or
>
> (*b*) includes in any return as a debt an amount which was not actually due and owing, or in respect of which no liability had accrued, at the time of death, except rates, taxes and duties payable under any Commonwealth or State Act,
>
> shall be liable to pay by way of additional duty the amount of One pound or double the Duty which would have been evaded if the assessment had been based on the return lodged, whichever is the greater, in addition to any additional duty which may become payable by him in accordance with Section thirty-one of this Act :
>
> Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional duty or any part thereof."

With regard to Sub-clause (*a*) of the proposed new Section, we consider its operation should be limited to cases where an administrator failed to include in his return a statement of assets of which he had knowledge. It is not infrequent, particularly with regard to gifts *inter vivos*, made before the testator's death, but within the time limited by the Act which makes such gifts dutiable, for the administrator to be ignorant of the existence of assets at the time when he prepares his return. If without unreasonable delay after the discovery by him of the omission he informs the Commissioner of assets not previously returned, in our opinion he should not be subject to any penalty.

1056. With regard to Sub-clause (*b*), if the inclusion in question were the result of imperfect information, for which the administrator was not responsible, in our opinion he should not be subject to any penalty or additional Duty. In the proposed wording of this Sub-clause, **it is in our opinion necessary to make clear that obligations in the nature of debts, which may be said to have arisen before the death of the testator, although amounts were not actually payable at that date, should be regarded as debts which the administrator is entitled to deduct from the gross value of the estate.**

1057. **Section 48** reads :—

> 48. Any person who—
>
> (*a*) with intent to defraud, in any return understates the value of any estate, or
>
> (*b*) by any wilful act default or neglect, or by any fraud, art or contrivance whatever, evades assessment or duty,
>
> shall be guilty of an indictable offence.
>
> Penalty : Five hundred pounds or imprisonment for three years.

The penalty prescribed by this Section is in the alternative, namely, a fine of **£500** or imprisonment for three years. It is observed that in the *Income Tax Assessment Act* 1922 provisions have been inserted rendering a person against whom a pecuniary penalty has been adjudged liable to imprisonment on failure to pay such penalty. But neither in the Commonwealth Income Tax Assessment Act nor in the Commonwealth Land Tax Assessment Act is there a provision similar to the imprisonment penalty of Section 48 of the Estate Duty Assessment Act. The provision of imprisonment as an alternative penalty in a Taxation Act is by no means universal, and where it exists imprisonment is rarely, if ever, imposed.

1058. With regard to the Estate Duty Assessment Act, the Commissioner of Taxation informs us that the question of retaining the penalty of imprisonment will be reconsidered. **Unless there are strong reasons for its retention, which have not been disclosed to us, this provision should, in our opinion, be eliminated.**

1059. **At this point, we wish to draw special attention to the fact that, if our recommendation for the substitution of Succession Duty in lieu of Estate Duty be adopted, a complete re-drafting of the Act will probably be necessary. It has not always been possible, if it had been desirable, to indicate, in our comments upon the present Act, what changes, in our opinion, would be necessary if that basic change were made.**

SECTION XLVII.

ENTERTAINMENTS AND AMUSEMENTS TAXATION.

1060. **Commonwealth Entertainments Tax Assessment Act.**—The Commonwealth Entertainments Tax Assessment Act was assented to in December, 1916, and was brought into operation on the 1st January, 1917. The Act relates to the imposition, assessment and collection of a tax upon payments for admission to entertainments.

1061. The general administration of the Act is vested in the Commissioner of Taxation (Section 4) who (under Section 5) may delegate to the Assistant Commissioner all or any of his power or functions under the Act (except the power of delegation). That Section also authorizes the Commissioner, in relation to any particular matter or class of matters, or to any particular State or part of the Commonwealth, to delegate necessary powers to any other person (Section 5). This authority has been exercised in favour of the Deputy Commissioners of the several States.

1062. The Commissioner is required to furnish annually for presentation to Parliament a report on the working of the Act, in which attention is to be drawn to breaches or evasions of the Act (Section 6).

1063. **Rates Payable.**—The rates payable under the *Entertainments Tax Act* 1916 were altered under Amending Acts in 1918, in 1919, and again in 1922. The rates payable under the respective Acts are as follows:—

Year in which Act was Passed.	Period Operating.	Payment for Admission (excluding the Amount of Tax).	Rate of Tax.
1916	1st January, 1917, to 11th November, 1918	Exceeding sixpence and not exceeding one shilling	One penny
		Exceeding one shilling	One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1918	12th November, 1918, to 30th November, 1919	Not exceeding one shilling, excepting payments not exceeding threepence for the admission, on Saturdays between the hours of twelve o'clock noon and six o'clock in the afternoon, of children apparently under the age of twelve years	One penny
		Exceeding one shilling	One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1919	1st December, 1919, to 1st October, 1922	Not exceeding fivepence for the admission to a continuous place of entertainment of persons apparently over the age of sixteen years	One halfpenny
		Sixpence	One halfpenny
		Exceeding sixpence, but not exceeding one shilling	One penny
		Exceeding one shilling	One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1922	2nd October, 1922 (still in operation)	One shilling	One penny
		Exceeding one shilling	One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling

1064. **Definitions.**—In Section 2 of the Act the following definitions occur:—

"Admission" means admission as a spectator or one of an audience, and includes admission for the purpose of participating in any exercise in which the payment for admission entitles him to participate;

"Entertainment" includes any exhibition, performance, lecture, amusement, game or sport for admission to which payment is made;

"Payment for admission" includes any payment made by a person as a booking fee for admission, or by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving tax or more tax is required;

"Proprietor" in relation to any entertainment includes any person responsible for the management thereof.

1065. **Obligations of Proprietor.**—Section 8 provides that no person shall be admitted for payment to any entertainment where the payment is subject to tax except with a ticket stamped with an unused stamp denoting that the proper tax has been paid; or, in special cases, through a barrier which automatically registers the numbers of persons admitted. To obviate the necessity for observance of either of the above rules the proprietor may make arrangements with the Commissioner (or Deputy Commissioners) for furnishing return of payments for admission, provided that he has given security up to an amount and in a manner approved by the Commissioner for the payment of the tax.

In all cases where a proprietor collects tax from the public he holds it as property of the Commonwealth (Section 8 (2)), and the tax, if the amount is less than **£50,** may be recovered from the proprietor (without prejudice to any other means of recovery) summarily as a civil debt (Section 10).

1066. **Clubs, &c.**—In some cases annual payments made by members of Clubs, Associations or Societies cover only the right of admission to a series of entertainments. In such a case tax is charged on the lump sum. Where the payment covers other rights, the Commissioner decides what portion represents payment for admission to entertainments and charges tax thereon (Section 11).

1067. **Exemptions from Tax.**—Payments for admission to entertainments are exempt from tax when it is shown to the Commissioner's satisfaction:—

(*a*) that the whole of the takings thereof are devoted to philanthropic, religious or charitable purposes, without any charge on the takings for any expenses of the entertainment; or

(*b*) that the entertainment is of a wholly educational character (any question on that point to be determined, in case of difference, by the Commissioner); or

(*c*) that the entertainment is intended only for the amusement of children, and that the charge is not more than sixpence for each person (under the *Entertainments Tax Amendment Act* 1922 tax is now levied only on payments for admission (excluding the amount of tax) of one shilling and upwards); or

(*d*) that the entertainment is provided for partly educational or partly scientific purposes by a Society, Institution or Committee not conducted or established for profit (Section 12).

1068. **Refunds.**—Tax may be refunded to a proprietor where the Commissioner is satisfied that the whole of the net proceeds of the entertainment are devoted to philanthropic, religious or charitable purposes and that the expenses of the entertainment do not exceed 50 per cent. of the gross receipts. Where the gross receipts of such an entertainment are diminished as the result of adverse climatic conditions so that the expenses exceed 50 per cent. the tax may be refunded (Section 13).

1069. **Entertainments for Patriotic Purposes.**—The Commissioner of Taxation in his Sixth Annual Report (page 130), dealing with the financial year 1915–16, states—

> "Under the wording of Section 13 all entertainments for patriotic purposes are dealt with. Claims have been made for treatment under this heading of entertainments arranged by associations of returned soldiers for the benefit of their own associations, but they have not been allowed, as it cannot be said that the object of one organization for the mutual protection and benefit of its members is patriotic within the generally accepted meaning of that word."
>
> "While Section 13 indicates that tax must be collected and then refunded if the expenses of the entertainment have not exceeded 50 per cent. of the receipts, the Department does not administer it in that way. It requires promoters of entertainments coming within the classes mentioned in the Section to register the entertainments, and obtain exemption from tax, subject to the condition that tax will be paid if, upon production of properly attested accounts, the Department finds that the expenses have exceeded 50 per cent. of the receipts. This arrangement is found to work excellently, and to save time and expense to the Department and the public."

1070. In his Seventh Annual Report, dealing with the financial years 1916–17 to 1919–20 (page 212), the Commissioner further remarks, in reference to this Section—

> "In October, 1919, the Honorable the Treasurer, however, approved of refunds of tax in respect of entertainments for—
>
> (1) 'Welcome Home' or other such functions held on the return of soldiers;
> (2) The purpose of raising funds for erecting Memorial Halls or other buildings for the use of returned soldiers.
>
> To secure a refund promoters must submit with their application evidence showing that the proceeds of the entertainment are to be used for the purpose for which such

entertainments are held, *i.e.*, the proceeds have been definitely set aside for the building of Memorial Halls or Club Rooms, and that this money cannot be used for any other purpose. The amounts claimed are checked with the original returns made to the Department, and if found correct the claim is certified and then forwarded to the Treasury for payment."

1071. **Right of Entry.**—Section 14 provides that any officer authorized by the Commissioner may enter any place of entertainment at any reasonable time to see that the provisions of the Act and the regulations prescribed thereunder are being complied with. The Act provides a maximum penalty of **£20** for the offence of preventing or obstructing the entry of an authorized officer of the Department (Section 14).

1072. **Offences and Penalties.**—If any person is admitted for payment to any place of entertainment in contravention of the Act, the person admitted and the proprietor are each guilty of an offence. The maximum penalty in the case of the former is **£5** and of the latter **£50.** In addition, the proprietor is made liable for the unpaid tax (Section 15).

Section 16 enumerates a series of indictable offences (such as forging a die or stamp, fraudulently mutilating any stamp with the intent that any use should be made of any part of the stamp), the maximum penalty for which is imprisonment for fourteen years.

Other indictable offences constituted under Sections 17, 18, and 19 respectively involve liability to penalties of imprisonment for seven years, three years and one year.

Power is given under the Act, on information given before a Justice of the Peace on oath, to search the premises of any person suspected of being guilty of an indictable offence and to seize any machinery, implements or utensils applicable to the commission of such an offence (Section 20).

Section 21 authorizes the framing of regulations under the Act and the prescribing of penalties not exceeding **£50** for any breach of the regulations.

1073. **British Entertainments Duty.**—The *Finance (New Duties) Act* 1916, which imposed Duties in respect of admission to entertainments, became operative in respect of these Duties on 15th May, 1916.

The Duties levied under the Act were the following :—

Where the payment, excluding the amount of the Duty does not exceed 2d.						A halfpenny
Exceeds	2d.	and does not exceed		6d.	.. ..	One penny
,,	6d.	,,	,,	2s. 6d.	..	Twopence
,,	2s. 6d.	,,	,,	5s.	.. ..	Threepence
,,	5s.	,,	,,	7s. 6d.	..	Sixpence
,,	7s. 6d.	,,	,,	12s. 6d.	..	One shilling
,,	12s. 6d.	,,	,,	..	..	One shilling for the first 12s. 6d. and one shilling for every 10s., or part of 10s. over 12s. 6d.

1074. Successive alterations in the above rates were made under the Finance Acts of 1917, 1918 and 1919. The rates fixed by the *Finance Act* 1919 came into force on 1st October, 1919, and are as follows :—

Where the payment, excluding the amount of the Duty, does not exceed 2½d.						A halfpenny
Exceeds	2½d.	and does not exceed		4d.	.. ..	One penny
,,	4d.	,,	,,	4½d.	..	One penny and a halfpenny
,,	4½d.	,,	,,	7d.	..	Twopence
,,	7d.	,,	,,	1s.	.. ..	Threepence
,,	1s.	,,	,,	2s.	.. ..	Fourpence
,,	2s.	,,	,,	3s.	.. ..	Sixpence
,,	3s.	,,	,,	5s.	.. ..	Ninepence
,,	5s.	,,	,,	7s. 6d.	..	One shilling
,,	7s. 6d.	,,	,,	10s. 6d.	..	One shilling and sixpence
,,	10s. 6d.	,,	,,	15s.	..	Two shillings
,,	15s.	,,	,,	..	..	Two shillings for the first 15s., and sixpence for every 5s., or part of 5s. over 15s.

1075. The *Commonwealth Entertainments Tax Assessment Act* 1916, the *South Australian Stamp Act Further Amendment Act* 1916 (so far as it relates to Amusements Duty), the *Tasmanian Amusements Duties Act* 1916, and Part III. of the *New Zealand Finance Act* 1917 (relating to Amusements Tax) are each modelled largely on the lines of the Imperial enactment.

1076. Some of the provisions of the British Act which differ materially from those of the Australian Acts may be briefly referred to—

Exemptions.—The British Act provides—

1. That any question on the point of an entertainment being of a wholly educational character shall be determined, in case of difference, in England, by the Board of Education; in Scotland, by the Scotch Education Department; and, in Ireland, by the Lord-Lieutenant.
2. Entertainments Duty is not charged on payments for admission to any entertainment where the Commissioners are satisfied that the entertainment is intended only for the amusement of children, and that the charge is not more than 2d. for each person (1921 Act).
3. Duty is not charged in respect of an entertainment provided by a Society or Institution not conducted or established for profit, which has been founded with the object of reviving national pastimes, in furtherance of that object.
4. Duty is not charged in respect of an entertainment if the Commissioners are satisfied that it is—
   (*a*) Provided by a Society which is established solely for the purpose of promoting the interest of the industry of agriculture, or some branch thereof, or the manufacturing industry, or some branch thereof, or the public health, and which is not conducted for profit; and
   (*b*) Consists solely of an exhibition of the products of the industry or branch thereof, for promoting the interests of which the Society exists, or materials, machinery, appliances or foodstuffs used in the production of those products, or of articles which are of material interest in connexion with the questions relating to the public health, as the case may be.

Penalties.—The British Act provides that if any person acts in contravention of or fails to comply with any Regulation made under the Act, he shall be liable in respect of such offence to an excise penalty of Fifty pounds.

1077. **South Australian Amusements Duty.**—Part 1 of the *South Australian Stamp Act Further Amendment Act* 1916 imposes Stamp Duties in respect of admission to amusements. Section 21 of the Act provided that Part 1 (relating to the Amusement Duty) should expire on the 31st December, 1917, but this Section of the Act was repealed in November, 1917, and Amusements Duty continues to be levied and collected as follows :—

Where the payment, excluding the amount of Duty—	
(1) does not exceed threepence	One farthing
(2) exceeds threepence, but does not exceed sixpence	One halfpenny
(3) exceeds sixpence—for every sixpence or fractional part of sixpence of such payment..	One halfpenny
Members' or season tickets	One halfpenny for every sixpence or fractional part of sixpence of the price of such ticket

In cases where properly constructed barriers or mechanical contrivances which automatically register the actual number of persons admitted through or past such barriers or contrivances as the means of gaining admission to an amusement are permitted to be used in lieu of duly stamped tickets, Duty at such of the above rates as may be applicable upon the total of the returns made by the promoter of such amusement calculated as though the numbers registered had been tickets issued.

1078. Several of the provisions of the South Australian Act relating to the Amusements Duty were embodied without alteration in the Commonwealth Entertainments Tax Assessment Act, which was enacted some two moths later; but the following provisions in the South Australian Act may be compared with the corresponding provisions in the Commonwealth Australian Act :—

Definitions.—Section 5 of the South Australian Act contains the following definitions :—

"Admission" means admission as a spectator or one of the audience, and "payment on admission" includes any payment made by a person who, having been admitted to one part of a place where an amusement is held, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required;

"Amusement" means amusement (including, though without limiting the meaning of that term, concert, recital, lecture, reading, entertainment of the stage, cinematograph or other picture show, dancing, boxing, horse-racing, or other exhibition, performance, amusement, sport, game, or contest of any kind whatsoever) to which persons are admitted for payment; and "admission to an amusement" includes admission to any place in which the amusement is held;

"Promoter," in relation to any amusement, includes the person, company, corporate body, or association having the superintendence or management of the amusement, and also includes the agent, trustee, manager, or committee of any such person, company, corporate body, or association respectively, and also includes any person responsible for the management of the amusement.

Exemptions.—Section 10 of the South Australian Act reads as follows:—

10. (1) Where, upon application being made by the promoter of any amusement to the Commissioner prior to the giving of such amusement, the Commissioner is satisfied—

(*a*) that the whole of the gross takings or the whole of the net proceeds of such amusement are to be devoted to charitable, patriotic, religious, educational, or scientific purposes, and

(*b*) that the estimated expenses (if any) to be incurred in connexion with such amusement are reasonable,

he may give to such promoter a certificate under his hand exempting such amusement from the payment of amusements duty, and such certificate shall be evidence that amusements duty is not chargeable on payments made for admission to such amusement.

(2) If the estimate of expenses to be incurred in connexion with such amusement is exceeded, any certificate granted under sub-section (1) hereof with respect thereto may be declared by the Commissioner to be null and void, and thereupon—

(*a*) the exemption hereby granted shall cease, and

(*b*) the promoter to whom the same was granted shall be liable to a penalty not exceeding Twenty Pounds, unless he satisfies the Commissioner that such excess could not reasonably have been foreseen.

(3) Amusements duty shall not be charged on payments for admission to any agricultural, horticultural, floricultural, poultry, dog, or other like show.

Penalties.—Section 20 of the South Australian Act provides that any contravention of or failure to observe any provision of the Act shall be an offence, and that every person guilty of an offence for which no specific penalty is prescribed shall be liable to a penalty not exceeding **£50** or to imprisonment for a period not exceeding twelve months.

Section 18 (2) of the South Australian Act provides that any regulation made under the Act may fix penalties not exceeding in any case the sum of **£10** for any breach of the same or any other regulation.

1079. **Tasmanian Amusements Duty.**—The *Tasmanian Amusements Duties Act* 1916 (assented to on 23rd December, 1916) was amended by the *Amusements Duties Amendment Act* 1917 (assented to on 8th February, 1917) in order to bring the measure into closer harmony with the Commonwealth Entertainments Tax Assessment Act and to facilitate the collection of the Duty by the Commonwealth. Under the existing arrangement specifically authorized by Section 5a of the Tasmanian 1917 Act, the whole of the tax leviable under both the Commonwealth and Tasmanian Acts is collected by the Commonwealth, the portion belonging to the State being then handed over without any deduction for the expense of collection. In consideration of this arrangement, the services of the State police in the way of supervision, &c., are given free of charge.

1080. The Rates Schedule of the Tasmanian Act is as follows:—

Amusements Duty shall be payable as follows:—

1. Where the payment, excluding the amount of Duty—	
(1) does not exceed sixpence	One halfpenny
(2) exceeds sixpence, for every sixpence or fractional part of sixpence of such payment	One halfpenny
2. Members' or Season Tickets	One halfpenny for every sixpence or fractional part of sixpence of the price of such ticket

1081. It is only necessary to refer to the principal remaining points of difference between the Tasmanian and the Commonwealth Acts:—

Exemptions.—The Tasmanian Act, which includes as exempt from Duty payments for admission to (amongst others) any amusement where the Commissioner is satisfied that—

"the amusement is provided for partly educational or partly scientific purposes by a Society, institution or Committee not conducted or established for profit,"

also provides that—

"Where it is proved to the satisfaction of the Treasurer of the State that the amusement is provided by any *bonâ fide* local registered band for the purpose of raising

funds for the maintenance of such band, the amount of amusements duty charged on payments for admission to such amusement shall be paid by said Treasurer to the promoter."

Regulations.—Penalties.—Section 29 of the Tasmanian Act provides (as in the case of the South Australian Act) that any regulation made under the Act may fix penalties, not exceeding in any case the sum of **£10,** for any breach of the same or any other regulation. The Commonwealth Act, as previously mentioned, authorizes the prescribing of penalties, not exceeding **£50,** for any breaches of the Regulations.

1082. **New Zealand Amusements Tax.**—The rates charged when the New Zealand Amusements Tax came into force on 1st November, 1917, were altered as from 1st January, 1922, to the following:—

Where price charged for admission does not exceed ninepence	Nil
Where price charged exceeds ninepence, but does not exceed three shillings and sixpence	One penny for every shilling or part of a shilling
Where price exceeds three shillings and sixpence	One penny for every shilling or part of a shilling, together with, in addition to the amount of tax calculated as aforesaid, the sum of one penny.

1083. **Criticism by Witnesses.**—The main criticism against a tax of this nature was voiced by Theatrical Proprietors, whose view was expressed thus by a representative:—

"My contention is that the Amusement Tax is a 'Class Tax,' that it is unfair in its incidence. It is the only business whose customers are taxed for purchasing its goods. The reason why I maintain it is unfair in its incidence is that it only affects but a limited portion of the inhabitants. A great proportion of the population take their amusement in other forms and are not taxed. It has affected the attendances in the cheaper parts of the theatre, but, whether this is so or not, or whether the public can afford to pay it, is beside the mark, and in no way justifies a 'Class Tax.'"

1084. Complaint was made to the Commission by representatives of Country interests as to the delay in obtaining registration under the Commonwealth Act, especially in the case of the more remote districts, but this has since been rectified by enabling registration to be effected with local Postmasters.

1085. Evidence was submitted by representatives of certain Musical Societies in support of their claim for immunity from tax under Section 12 (*d*) of the Act, on the grounds that their entertainments were provided for partly educational purposes, and that their Societies were not conducted or established for profit. (Under the departmental interpretation of the Act as expressed in Office Order No. 209 such entertainments are taxed).

1086. A suggestion was made by one witness, who was the Secretary of a Musical Society, that a new sub-clause should be added to Section 12 of the Act, to read as follows:—

"(*e*) That the entertainment is provided wholly or in part for musical education or for the promotion or cultivation of love of music, or to raise funds for any of such purposes by a Society, institution or Committee not conducted or established for profit."

1087. **We are of opinion that the principle upon which liability to tax should be determined in the case of a Musical Society is already expressed with sufficient clearness in sub-section (d) of Section 12,** under which exemption from tax is granted in the case of an entertainment which is provided **for partly educational purposes** by a Society, institution or Committee **not conducted or established for profit.**

1088. **In cases arising under this sub-section, taxability rests upon questions which, if forming the subject of dispute, might, in our opinion, be suitably referred for final decision to the Board of Appeal.**

1089. **Comments on Suggested Amendments of the Commonwealth Entertainments Tax Assessment Act.**—We are officially informed that amongst the amendments which have been recommended to the Government are the following:—

(1.) To amend Section 2 (Definition of "Admission") to make taxable payments for articles supplied by a proprietor for the purpose of the entertainment—such as skates.

If it is, as we assume, suggested that a payment for the hire or use of articles supplied by a proprietor should be made taxable, **we think the suggestion a reasonable one, provided that such payment, together with the sum paid for admission, amount to at least the prescribed minimum payment for admission upon which tax is levied.**

(2.) To widen the definition of "Proprietor" so that persons who apply for registration of an entertainment cannot later claim not to be the "proprietors" of an entertainment and therefore to be not liable for the tax.

We consider the suggestion a reasonable one, subject to the right of an applicant to withdraw from liability upon giving notice within a prescribed time prior to the entertainment.

(3.) To provide for the full amount of any security bond becoming payable to the Commissioner on breach of conditions of the bond. At present only the tax can be retained, which cannot be ascertained if the proprietor refuses to make returns.

We do not approve of this suggestion. In our opinion the security furnished in accordance with Section 8 (1) of the Act should be regarded as in the nature of an indemnity. The arbitrary forfeiture of the full amount of the security bond because of failure to furnish a return might in many cases mean the infliction of an unduly severe penalty. The failure or refusal to furnish a return will, we consider, be adequately met by empowering the Commissioner to issue a default assessment, as suggested in the succeeding paragraph.

(4.) To enable the Commissioner to make a default assessment in certain cases, this being a power given in all other Commonwealth Taxation Acts. This power is necessary where proprietors refuse or neglect to furnish returns or furnish returns obviously incorrect.

We concur in this suggestion. (See recommendation in preceding paragraph).

(5.) To exempt from tax entertainments for the purpose of erecting or furnishing memorial halls, club rooms and other similar buildings for the use of returned soldiers, provided—

(*a*) that no political purpose is to be served by the entertainment;

(*b*) that the entertainment is not for the benefit of persons other than returned soldiers or their dependants.

We concur in this suggestion.

(6.) Power is sought to make it an offence to fail to pay to the Commissioner within seven days after an entertainment the tax collected. In a recent actual case, the tax collected was not paid to the Commissioner, but as there was no evidence of a criminal offence prosecution had to be dropped. A severe penalty (£100 or twelve months' imprisonment) is suggested.

We consider it reasonable that failure on the part of the proprietor of an entertainment to remit tax collected to the Commissioner within a reasonable time should involve a penalty by way of fine, in addition to the tax.

In this connexion, Regulation 47A, which came into operation in March, 1919, appears to afford the necessary protection to the revenue. The Regulation reads—

"Any proprietor who, without lawful excuse (proof whereof shall lie upon him), fails within seven days after the close of an entertainment, to pay to the Commissioner the tax due in respect of the entertainment shall be guilty of an offence. Penalty: Fifty pounds."

(7.) It is proposed to insert a section relating to secrecy and non-production of official documents similar to that found in other Commonwealth Taxation Acts.

We concur in this suggestion.

1090. **Note.**—We desire it to be understood that while submitting recommendations for amendment of the Commonwealth Entertainments Tax Assessment Act (the continuance of which may be a temporary necessity), we adhere to the view already expressed in our Second Report (paragraph 249) that, as part of a scheme for the allocation of subjects of direct taxation between the Commonwealth and the States, **the power to impose** Land, Probate or Succession, and **Entertainments Taxation** (the existing forms of direct taxation other than that of Income Tax) **should be exclusively vested in the States,** subject only to the overriding powers of the Commonwealth in the case of war.

1091. **Board of Appeal.—In our opinion, the functions of the existing Board of Appeal** (appointed under the Income Tax Assessment Act) **should be extended to admit of its hearing appeals arising under the Entertainments Tax Assessment Act.** Such extension of the Board's functions would, we think, be justified for the same reasons as have been advanced in support of our recommendations with regard to the Board of Appeal under the Income Tax, Land Tax and Estate Duty Assessment Acts.

1092. **Consideration of Objections.**—The main objections raised against an Entertainments Tax briefly summarized are:—

1. That from its nature, while certain forms of amusement and recreation are made contributory to the revenue, others are necessarily free from any such contribution; and
2. That the forms of amusement and recreation subject to the tax are essential to the mental, moral and physical well-being of the community, and should therefore be encouraged or at least countenanced rather than penalized by the imposition of any additional charge in the form of tax upon their patrons.

1093. With regard to the first-named objection, as to the partial application of the imposition, in our opinion that is not a conclusive objection as it would obviously not be practicable to apply a tax of this nature to all forms of amusement or recreation.

1094. With regard to the second objection raised against the tax, viz., that the forms of amusement and recreation subject to tax are of special value to the community, and should therefore be encouraged rather than penalized, any assumption that the imposition of the tax has tended to discourage participation in these forms of amusement and recreation would seem to be rebutted by the facts available to us. For example the statistics published in the Seventh Annual Report of the Commissioner of Taxation, supplemented by later particulars furnished by the Department, disclose the following information:—

Period of Collection.	Total Number Admissions.	Total Tax.
		£ s. d.
1st July, 1917 to 30th June, 1918 ..	32,375,389	238.396 12 1
,, 1918 ,, 1919 ..	56,174,994	354,652 19 4½
,, 1919 ,, 1920 ..	95,866,621	551,317 3 11½
,, 1920 ,, 1921 ..	101,286,921	643,800 0 0
,, 1921 ,, 1922 ..	101,092,221	674,931 0 0

1095. **Probable Revenue Effect of 1922 Changes in Rates.**—The particulars furnished of the Commonwealth Collections of Entertainments Tax for the year 1919–20 in Schedule No. 5 of the Commissioner's Seventh Annual Report disclose the fact that over one-fourth of the total amount of the tax for that year was paid in respect of prices of admission (excluding tax) of less than 1s. This would suggest that the recent amendment in the rate of Tax (see paragraph 1063) will, upon last year's figures, involve an annual reduction in Revenue of at least £150,000.

1096. **Entertainments Tax—Should it be permanent?**—As a War-time measure, the Entertainments Tax met with but little opposition, as it did not seem unreasonable that those who had time, inclination and means to indulge in certain forms of sport and amusement should be required to contribute to the national funds. It is significant of an altered attitude towards Commonwealth Taxation of this nature that a Bill to repeal the Act was passed by the House of Representatives in 1921, though it was defeated in the Senate.

1097. **We regard an Entertainments Tax in the scheme of National Finance as being in the nature of emergency legislation, the repeal of which should be considered as soon as the public finances admit.** While it is apparently freer from administrative difficulties and is less costly to collect than other forms of direct taxation, on economic grounds it is open to the objection that its incidence is necessarily partial and uneven. It has not been in force sufficiently long, nor have the conditions under which it has operated approached nearly enough to the normal, to enable us to express a confident opinion as to its social effects.

SECTION XLVIII.

WAR-TIME PROFITS TAX ASSESSMENT ACT 1917-1918.

1098. This Act applies "to the profits of any business arising up to the 30th June, 1919." The operation of the Act, therefore, was exhausted some time before the commencement of our inquiry, except in respect of outstanding or unissued assessments. Early in our investigation we learned that the number of outstanding and unissued assessments was very considerable. The difficulties of administration of this highly complex Act may be gauged from the fact that (as we are informed) even at the present date, January, 1923, the issue of assessments has not been completed.

1099. The Act provides—

> "27. (1) There shall be a Board or Boards of Referees to be appointed by the Governor-General.
>
> (2) The Board of Referees shall consider such cases as are referred to it by the Commissioner and as are prescribed."

No Board of Referees was, however, appointed, and this omission was a subject of complaint by many witnesses.

1100. In view of the number of still unsettled cases and unissued assessments under the Act, **we recommend** that the Board of Appeal constituted under the *Income Tax Assessment Act* 1915-1921 be given similar powers of adjudication in relation to matters arising out of the War-time Profits Tax Assessment Act.

If this recommendation and the similar recommendations in respect of Land Tax, Estate Duty, and Entertainments Tax be adopted, the result will be that the Board of Appeal will be empowered to act in relation to matters arising out of all the Taxation Acts administered by the Commonwealth Commissioner of Taxation.

ACKNOWLEDGMENTS.

We wish to express our indebtedness to the Australian Governments for their courtesy in affording facilities for the conduct of our inquiry and in placing at our disposal the services of expert officers.

We also desire gratefully to acknowledge the willing and courteous assistance afforded us in the course of our inquiry by Commonwealth and State officials, and by many others outside the Public Service, to all of whom we tender our warm thanks.

The care and skill with which evidence was prepared, and the ready response to many requests for the loan of, or access to, works of reference, departmental statistics and other sources of information, was much appreciated by us, and greatly facilitated our study of various questions incidental to our investigation.

Our first secretary, Mr. A. G. Brown, M.A., L.L.B., was, at the conclusion of our First Report, transferred to other important duties in the Commonwealth Public Service.

In his place Mr. S. E. Jelley, F.C.A.A., who had been associated with the Commission as Accountant, was at first appointed Acting Secretary and subsequently Secretary to the Commission. Mr. Jelley's knowledge of accountancy has been of particular value in the investigation of many proposals and in the compilation of numerous tabulated statements, and the ability he has displayed in the preparation of the several important graphs that form part of our Second and Fifth Reports merits special commendation.

In concluding this, our Fifth and Final Report,

We have the honour to be,

Your Excellency's most obedient Servants,

W. WARREN KERR, Chairman.
JOHN JOLLY.
J. G. FARLEIGH.
W. T. MISSINGHAM.
S. MILLS.
M. B. DUFFY.

S. E. JELLEY, Secretary.
Melbourne, 28th February, 1923.

