

No. 43, 1955.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

## ACT

To fix the rates of normal and super income tax in respect of the year of assessment ending the thirtieth day of June, 1955; to amend the law relating to income tax; to provide for the taxation of undistributed profits and of donations, and to discharge persons from liability in respect of unpaid loan portions of normal and super tax unassessed as at the first day of July, 1955.

(English text signed by the Governor-General.)  
(Assented to 13th June, 1955.)

**BE IT ENACTED** by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Rates of normal  
and super tax.

**1.** (1) In terms of sub-section (2) of section *five* and sub-section (2) of section *twenty-three* respectively of the Income Tax Act, 1941 (Act No. 31 of 1941), hereinafter referred to as the principal Act, the rates of normal and super tax to be levied for the year of assessment ending the thirtieth day of June, 1955, shall be as follows:

(A) In so far as normal tax is concerned—

(a) in respect of the taxable income (excluding so much as is derived from mining operations carried on in the Union by any company but including so much as the Commissioner determines to be attributable to the inclusion in the gross income derived from mining in the Union for gold of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act)—

(i) in the case of all companies, for each pound of the taxable income, five shillings;

(ii) in the case of persons other than companies, for each pound of the taxable income not exceeding nine thousand three hundred pounds, eighteen pence increased by one one-thousandth of a penny for each pound of such taxable income in excess of one pound, and for each pound of the taxable income over and above nine thousand three hundred pounds, thirty-seven pence: Provided that for a married person the rate for each pound of the taxable income not exceeding nine thousand three hundred pounds shall be fifteen pence increased by one one-thousandth of a penny for each pound of such taxable income in excess of one pound, and for each pound of the taxable income over and above nine thousand three hundred pounds, thirty-four pence: Provided further that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this item (including the foregoing proviso thereto), a sum equal to fifteen per centum of the net amount arrived at after deducting the rebates provided for in section *thirteen* of the principal Act from the amount of the tax so calculated;

(b) in respect of so much of the taxable income as has been derived by any company from mining in the Union for gold (but with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (f) of the definition of "gross income"

in section *seven* of the principal Act), on each pound of the taxable income a percentage determined in accordance with the formula:

$$y = 63 - \frac{378}{x}$$

in which formula (and in the formulae set out in the proviso hereto)  $y$  represents such percentage and  $x$  the ratio expressed as a percentage which the taxable income so derived (with the said exclusion) bears to the income so derived (with the said exclusion): Provided that if the taxable income so derived (with the said exclusion) does not exceed twenty thousand pounds, the rate of tax shall not exceed a percentage determined in accordance with the formula:

$$y = 20 \left( 1 - \frac{6}{x} \right)$$

and if such taxable income exceeds twenty thousand pounds, the rate of tax shall not exceed a percentage determined in accordance with a formula arrived at by adding to the number 20

in the formula  $y = 20 \left( 1 - \frac{6}{x} \right)$  one for each com-

pleted amount of twelve hundred and fifty pounds by which the said taxable income exceeds twenty thousand pounds;

- (c) in respect of so much of the taxable income as has been derived by any company from mining in the Union for diamonds, for each pound of the taxable income, nine shillings;
- (d) in respect of so much of the taxable income as has been derived by any company from mining operations (other than mining for gold or diamonds) carried on by such company in the Union, for each pound of the taxable income, six shillings;
- (e) in respect of so much of the taxable income of any company, the sole or principal business of which in the Union is mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, as the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act, for each pound so determined to be attributable to the inclusion of any such amount, the amount by which the average rate of normal tax as determined under paragraph (b) of sub-section (2) exceeds the rate prescribed in item (i) of subparagraph (a).
- (B) In so far as super tax is concerned, for each pound of the income subject to super tax not exceeding nine thousand three hundred pounds, two shillings increased by one four-hundredth of a penny for each pound of such income subject to super tax in excess of one pound, and for each pound of the income subject to super tax over and above nine thousand three hundred pounds, five shillings and ten pence: Provided that there shall be added to the amount of the tax calculated in accordance with the preceding provisions of this paragraph a sum equal to fifteen per centum of the net amount arrived at after deducting the rebates provided for in section *twenty-nine* of the principal Act from the amount of the tax so calculated.
- (2) (a) For the purposes of paragraph (A) of sub-section (1) income derived from mining in the Union for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may

be won in the course of the mining for gold, and any income which, in the opinion of the Commissioner, results directly from mining for gold.

- (b) For the purposes of sub-paragraph (e) of paragraph (A) of sub-section (1), the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with the said sub-paragraph for the period assessed) paid by the company concerned in respect of its aggregate taxable income from gold mining for the period from the first day of July, 1916, to the end of the period assessed, by the number of the pounds contained in the said aggregate taxable income.
- (c) The tax determined in accordance with any one of the sub-paragraphs (a) to (e) of paragraph (A) of sub-section (1), shall be payable in addition to the tax determined in accordance with any other of the said sub-paragraphs.

(3) For the purposes of assessing any tax imposed by a provincial council in the exercise of its powers under the Financial Relations Consolidation and Amendment Act, 1945 (Act No. 38 of 1945), on the incomes of persons and companies, the amounts of normal tax and super tax payable under the Income Tax Acts of the Union by any taxpayer in respect of the year of assessment ending the thirtieth day of June, 1955, shall be deemed to be equal to the respective amounts which would have been payable as normal tax and super tax if the provisions relating to the addition referred to in the second proviso to item (ii) of sub-paragraph (a) of paragraph (A) of sub-section (1) and in the proviso to paragraph (B) of the said sub-section had not been enacted.

Amendment of section 1 of Act 31 of 1941, as amended by section 2 of Act 39 of 1945, section 3 of Act 55 of 1946, section 2 of Act 40 of 1948, section 2 of Act 45 of 1949 and section 2 of Act 56 of 1952.

2. Section *one* of the principal Act is hereby amended—

- (a) by the addition at the end of the definition of "benefit fund" of the following proviso:

"Provided that if any person is a member of any fund or funds (excluding any pension fund as defined in this section) established for the benefit of the employees of the person by whom such firstmentioned person is employed, and the said firstmentioned person or his widow, children, dependants or nominees can individually or jointly become entitled to receive from such fund or funds benefits (other than benefits the value of which would in terms of this Act be required to be included in the income of the recipient for normal tax purposes) totalling in all more than five thousand pounds, none of the said funds shall be regarded as a benefit fund for the purposes of this Act;":

- (b) by the substitution for paragraph (b) of the definition of "company" of the following paragraph:

"(b) any association incorporated or registered outside the Union which carries on business or has an office or place of business in the Union or in which any person ordinarily resident or carrying on business in the Union is interested as a shareholder or member; or".

Amendment of section 4 of Act 31 of 1941.

3. Section *four* of the principal Act is hereby amended by the addition at the end of sub-section (1) of the following proviso:

"Provided that any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Acts of the Union may be used by him for the purposes of the provisions of any other fiscal law administered by him."

Amendment of section 7 of Act 31 of 1941, as amended by section 2 of Act 34 of 1942, section 2 of Act 26 of 1943, section 3 of Act 39 of 1945, section 4 of Act 55 of 1946,

4. Section *seven* of the principal Act is hereby amended—

- (a) by the addition at the end of paragraph (g)*bis* of the definition of "gross income" of the following proviso:

"Provided that all dividends from sources outside the Union received by or accrued to any person (other than a company) who is ordinarily resident in the Union shall be deemed to have been received by or to have accrued to such person from a source within the Union;";

section 3 of Act 45 of 1949, section 2 of Act 64 of 1951 and section 3 of Act 56 of 1952.

Amendment of section 11 of Act 31 of 1941, as amended by section 4 of Act 34 of 1942, section 5 of Act 26 of 1943, section 6 of Act 39 of 1945, section 7 of Act 55 of 1946, section 4 of Act 40 of 1948, section 6 of Act 45 of 1949, section 5 of Act 56 of 1952, section 5 of Act 34 of 1953 and section 2 of Act 55 of 1954.

Amendment of section 13 of Act 31 of 1941, as amended by section 7 of Act 39 of 1945, section 8 of Act 55 of 1946, section 2 of Act 52 of 1947, section 5 of Act 40 of 1948, section 6 of Act 56 of 1952 and section 3 of Act 55 of 1954.

Insertion of section 16bis in Act 31 of 1941.

(b) by the addition at the end of paragraph (h) of the said definition of the following proviso:

“Provided that all amounts which in terms of sub-section (4) of section *eleven* are required to be included in the taxpayer's income shall be deemed to have been received by or to have accrued to the taxpayer from a source within the Union notwithstanding that such amounts may have been recovered or recouped outside the Union.”.

5. Section *eleven* of the principal Act is hereby amended—

- (a) by the deletion in paragraph (o) of sub-section (2), with effect from the date of commencement of the said paragraph, of the words “or letting”;
- (b) by the addition to the said sub-section of the following paragraphs:

“(q) in respect of any person suffering from any physical disability and the sum of whose taxable income (as calculated before allowing any deduction under this paragraph) and dividends referred to in paragraph (k) of sub-section (1) of section *ten* for the year of assessment in question does not exceed one thousand five hundred pounds, notwithstanding the provisions of paragraphs (a) and (b) of section *twelve*, so much of any expenditure, but not exceeding one hundred and fifty pounds, incurred by such person during such year of assessment as the Commissioner is satisfied was necessarily incurred by him in consequence of such disability and for the purpose of carrying on his trade and which is not such expenditure as is referred to in any of the other paragraphs of this sub-section;

(r) notwithstanding the provisions of paragraphs (a) and (b) of section *twelve*, an allowance not exceeding one hundred pounds in respect of fees paid by the taxpayer during the year of assessment to dentists and medical practitioners for dental and medical services rendered to the taxpayer, his wife, children or stepchildren referred to in paragraph (a) of sub-section (2) of section *thirteen*, or to any nursing home in connection with any confinement of his wife.”.

6. Section *thirteen* of the principal Act is hereby amended by the substitution in paragraph (a) of sub-section (2) for the word “ten” of the word “twelve”.

7. (1) The following section is hereby inserted in the principal Act after section *sixteen*:

“Assessment of persons residing, registered, managed or controlled outside the Union and who derive income from film business. 16bis. (1) Where any person referred to in sub-section (2) derives income under or by virtue of any contract or agreement with any other person in relation to the carrying on in the Union by such other person of any business of distributing, exhibiting or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connection with such films, such firstmentioned person shall be deemed to have derived under or by virtue of such contract or agreement a taxable income equal to an amount arrived at by deducting from an amount equal to ten per centum of the income derived by him as aforesaid any expenditure and losses (other than expenditure or losses of a capital nature) actually incurred by him in the Union during the year of assessment under or by virtue of such contract or agreement.

(2) The provisions of this section shall apply to every person (other than a company) who is not ordinarily resident in the Union and to any company which is not registered, managed nor controlled in the Union."

(2) The amendment effected by sub-section (1) shall be deemed first to have taken effect in respect of assessments for the year of assessment ended upon the thirtieth day of June, 1943: Provided that any assessments made before the coming into operation of this Act on any basis other than that provided for in such amendment shall not be invalidated by the said amendment.

Amendment of section 29 of Act 31 of 1941, as substituted by section 4 of Act 47 of 1944 and amended by section 8 of Act 39 of 1945.

8. Section *twenty-nine* of the principal Act is hereby amended—

(a) by the addition to sub-section (1) of the following paragraph:

"(c) in respect of the year of assessment ending on the thirtieth day of June, 1955, and any subsequent year of assessment, a further sum equal to the taxes on income, if any, paid or payable by the taxpayer to the Government of any other country or territory on any dividends referred to in the proviso to paragraph (g)*bis* of the definition of 'gross income' in section *seven* which have been included in his income subject to super tax for the year of assessment in question: Provided that the deduction under this paragraph in respect of any such dividends so included in the income subject to super tax of the taxpayer shall not exceed so much of the amount of the super tax payable by the taxpayer (as calculated before the deduction of any rebate under this section and the addition of the sum referred to in the proviso to paragraph (B) of sub-section (1) of section *one* of the Income Tax Act, 1955, or the corresponding provisions of any subsequent Income Tax Acts of the Union) for the year of assessment in question as is attributable on a proportionate basis to the inclusion in his income subject to super tax of the said dividends.";

(b) by the insertion in sub-section (2) after the word "deduction" of the words "in terms of paragraph (a) or (b) of sub-section (1)" and after the word "rebate" of the words "referred to in the relevant paragraph".

Amendment of section 30 of Act 31 of 1941, as substituted by section 5 of Act 47 of 1944 and amended by section 7 of Act 56 of 1952.

9. Section *thirty* of the principal Act is hereby amended by the addition to sub-section (1) of the following paragraph:

"(b) so much of any dividend received by or accrued to any person (other than a company) who is ordinarily resident in the Union from any company not registered in the Union as the Commissioner is satisfied has been distributed out of any profits of such company in respect of which any amount has been included (whether in the current or any previous year of assessment) in the taxable income or income subject to super tax of such person as the result of the apportionment under the income tax law of the Territory of South-West Africa of the taxable income or income subject to super tax of such company among its shareholders."

Addition of Parts V and VI to Chapter II of Act 31 of 1941.

10. The following parts are hereby added to Chapter II of the principal Act:

#### "PART V.

##### *Undistributed Profits Tax.*

Levy of undistributed profits tax.

49. Subject to the provisions of section *fifty-one* there shall be paid annually for the benefit of the Consolidated Revenue Fund by every company registered or carrying on business in the Union a tax (in this Act referred to as undistributed profits tax) of five shillings on each pound of the amount by which the distributable income of that company for the year of assessment ending the thirtieth day of June, 1955, and each succeeding year of assessment

thereafter, exceeds the amount of the dividends distributed by such company during the specified period.

Definitions  
for purposes  
of Part V of  
Chapter II.

50. For the purposes of this Part—

- (i) 'distributable income' in relation to any company in respect of any year of assessment means the amount arrived at by deducting from the sum of—
- (a) the total net profits of the company for the year of assessment; and
  - (b) all amounts deducted in terms of paragraph (i) of this definition in the determination of the company's distributable income, whether in the current or any previous year of assessment, which have been recovered or recouped by it during the current year of assessment,
- the sum of—
- (i) any expenditure (other than expenditure of a capital nature) which is proved to the satisfaction of the Commissioner to have been actually and necessarily incurred by the company during the year of assessment in the course and by reason of its ordinary business operations and which is not expenditure that is allowable as a deduction in the determination of the company's total net profits;
  - (ii) any taxes on income (excluding undistributed profits tax) payable by the company in respect of all amounts included in its total net profits; and
  - (iii) an allowance equal to forty per centum of so much of the sum of the amounts referred to in paragraphs (a) and (b) of this definition as is not attributable to the inclusion in the profits of such company of any dividends received by or accrued to or deemed to have been received by or to have accrued to it: Provided that, in the case of any company which is recognized as a public company in terms of paragraph (a) of sub-section (2) of section *thirty-three* and whose total net profits are derived solely or mainly from dividends, the allowance under this paragraph shall be an amount equal to forty per centum of the sum of the amounts referred to in paragraphs (a) and (b) of this definition.; (iv)
- (ii) 'fair value' in relation to any asset means the fair market value of such asset: Provided that in the determination of the fair market value of any asset regard shall be had, *inter alia*, to—
- (a) any sworn valuation of the asset which may be furnished by or on behalf of the company concerned;
  - (b) any valuation of the asset made by any competent and disinterested person appointed by the Commissioner;
  - (c) any other relevant facts within the knowledge of the Commissioner or the company concerned which either of them considers could reasonably be taken into account; (ii)
- (iii) 'specified period' in respect of any year of assessment, means the period of twelve months ending six months after the specified date for that year of assessment as defined in sub-section (4) of section *thirty-three*; (i)
- (iv) 'total net profits' in relation to any company in respect of any year of assessment means the net profits of that company for such year of assessment calculated in the manner prescribed

for the determination for normal tax purposes of taxable income in respect of that year of assessment, but irrespective of whether the profits are derived from a source within or outside the Union and subject to the inclusion in the profits of such company of all dividends from whatever source and any amounts referred to in paragraphs (h) and (i) of sub-section (1) of section *ten* received by or accrued to or deemed to have been received by or to have accrued to such company during such year of assessment. (iii)

Exemptions. 51. There shall be exempt from the undistributed profits tax—

- (a) any association referred to in paragraph (d) of the definition of "company" in section *one*;
- (b) companies referred to in paragraphs (c), (d) and (f) of sub-section (2) of section *thirty-three*;
- (c) companies in respect of which the provisions of sections *fifteen*, *sixteen*, *sixteen bis*, *eighteen* and *twenty* are by virtue of the definition of total net profits in section *fifty* applicable to the determination of that portion of their total net profits which is derived from their principal business;
- (d) any company which satisfies the Commissioner that shares representing not less than fifty per centum of its issued capital were throughout the specified period held by one or more persons (other than companies) not ordinarily resident nor carrying on business in the Union, or by one or more companies registered outside the Union and deriving the greater portion of their profits for the year of assessment in question from sources not within or deemed to be within the Union or by one or more such persons (other than companies) and one or more such companies: Provided that for the purpose of determining the portion of its profits which has been derived by any company from sources within or deemed to be within the Union for any year of assessment there shall be included in the profits derived by such company from sources within or deemed to be within the Union as well as in the profits derived by it from all sources during such year of assessment the amount, if any, by which the dividends received by or accrued to such company during such year of assessment from any company registered in the Union are less than the dividends which would have been received by or would have accrued to such firstmentioned company from such company registered in the Union if the latter had distributed by way of dividends during such year of assessment an amount equal to not less than thirty per centum of its total net profits for the said year of assessment;
- (e) any company registered outside the Union which carries on business in the Union and satisfies the Commissioner that not more than fifty per centum of its total net profits for the year of assessment in question was derived from sources within or deemed to be within the Union;
- (f) any company (other than a company which is not recognized as a public company in terms of paragraph (a) of sub-section (2) of section *thirty-three* and whose total net profits are derived solely or mainly from dividends) which satisfies the Commissioner that the amount arrived at by deducting from the sum of all its reserves (including any share premium account) and balance of profits unappropriated as at the specified date the sum of the dividends distributed by such company during the last six months of the specified period and the taxes on income (excluding

undistributed profits tax) payable by such company in respect of all amounts included in its total net profits for the year of assessment in question did not exceed the greater of the following amounts, namely—

- (i) fifteen thousand pounds; or
  - (ii) thirty per centum of such company's paid up capital as at the specified date;
- (g) any company whose total net profits for the year of assessment in question did not exceed five per centum of its paid up capital as at the specified date;
- (h) the South African Reserve Bank, the National Finance Corporation of South Africa and any company registered as a banking institution under the Banking Act, 1942 (Act No. 38 of 1942);
- (i) any company all of whose shares were throughout the specified period held by the Government of the Union or by one or more companies which are themselves exempt from this tax;
- (j) any company in which shares representing not less than seventy-five per centum of such company's issued capital are held by one or more companies in respect of which the provisions of section *twenty* are by virtue of the definition of total net profits in section *fifty* applicable to the determination of that portion of their total net profits which is derived from their principal business.

Assessment of undistributed profits tax.

52. The Commissioner shall after the close of the specified period issue an assessment to the public officer of the company of the amount by which the distributable income for any year of assessment exceeds the dividends distributed by such company during such specified period and shall state in such assessment the amount of tax payable and the place where and the date on which such tax shall be paid.

Special provisions to apply in certain cases.

53. (1) The liability for undistributed profits tax for any year of assessment of any company which is registered outside the Union and carries on business in the Union shall be determined as though—

- (a) that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the Union represented the company's total net profits for that year of assessment;
- (b) the sum of the company's reserves (including any share premium account) and balance of profits unappropriated which in the opinion of the Commissioner are attributable to its business in the Union represented the sum of all its reserves (including any share premium account) and balance of profits unappropriated;
- (c) the paid up capital of the company as at the specified date were equal to an amount which bears to such company's paid up capital the same ratio as its assets in the Union bear to its total assets;
- (d) the company had distributed by way of dividends during the specified period or any portion thereof an amount which bears to the amount of the dividends, if any, actually distributed by it during such period or such portion thereof, as the case may be, the same ratio as that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the Union bears to the company's total net profits for that year of assessment.

(2) (a) If any company has received as consideration for the issue by it of any share in



such company an asset other than cash and the Commissioner considers that the fair value of such asset as at the date of the issue of the share was less than the nominal value of such share, the paid up capital of such company shall for the purposes of this Part be reduced by the amount by which, in the opinion of the Commissioner, the nominal value of such share exceeded the fair value of such asset as at the said date. The preceding provisions of this paragraph shall apply *mutatis mutandis* where any company has received any asset as consideration for the payment by it of any amount in cash and the issue by it of any share in such company.

- (b) If in terms of any agreement the purchase price (or any portion thereof) paid by any company for any asset acquired by it had to be applied in the acquisition by any person of any shares to be issued by such company, that company shall, to the extent to which the said purchase price was required to be applied in the acquisition of such shares, be deemed for the purposes of paragraph (a) to have received such asset as consideration for the issue by it of such shares.

Objection  
and appeal.

54. The decision of the Commissioner in the exercise of his discretion under paragraph (i) of the definition of 'distributable income' in section fifty, paragraphs (d), (e) and (f) of section fifty-one and paragraph (a) of sub-section (2) of section fifty-three shall be subject to objection and appeal.

## PART VI.

### *Donations Tax.*

Levy of  
donations  
tax.

54bis. Subject to the provisions of section fifty-four *quat*, there shall be paid for the benefit of the Consolidated Revenue Fund a tax (in this Act referred to as donations tax) on the cumulative taxable value of all property disposed of (whether directly or indirectly and whether in trust or not) under donations which take effect on or after the twenty-fourth day of March, 1955, by any person (in this Part referred to as the donor) who, in the case of any person other than a company, is ordinarily resident in the Union, or, in the case of any company, is registered, managed or controlled in the Union.

Definitions  
for purposes  
of Part VI  
of Chapter  
II.

54ter. (1) For the purposes of this Part, unless the context otherwise indicates—

- (i) 'cumulative taxable value' means the sum of the values (excluding such values or such portions of such values, as the case may be, as are exempt from donations tax in terms of section fifty-four *quat*) of all property which is disposed of by any person under donations which take effect on or after the twenty-fourth day of March, 1955; (iii)
- (ii) 'donation' means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right; (iv)
- (iii) 'donee' means any beneficiary under a donation and includes, where property has been disposed of under a donation to any trustee to be administered by him for the benefit of any beneficiary, such trustee: Provided that any donations tax paid or payable by any trustee in his capacity as such may, notwithstanding anything to the contrary contained in the trust deed concerned, be recovered by him from the assets of the trust; (i)
- (iv) 'property' means any right in or to property movable or immovable, corporeal or incorporeal, wheresoever situated. (ii)

(2) For the purposes of this Part a donation shall be deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with or where property has been delivered under a donation which has not been registered or notarially executed, the date upon which the donor's right of recovery of the excess in value over five hundred pounds becomes prescribed.

Exemptions. 54quat. (1) Donations tax shall not be payable in respect of the value of any property which is disposed of under a donation—

- (a) to the spouse of the donor under a duly registered ante-nuptial contract or post-nuptial contract;
- (b) to the spouse of the donor who is not separated from him under a judicial order or notarial deed of separation;
- (c) as a *donatio mortis causa*;
- (d) in terms of which the donee will not obtain any benefit thereunder until the death of the donor;
- (e) which is cancelled within six months from the date upon which it took effect;
- (f) if such property consists of any right in or to an insurance policy which is disposed of by means of a cession in terms of which such right is to revert to the cedent if the cessionary predeceases the cedent;
- (g) if such property consists of any right in immovable property situate outside the Union and was acquired by the donor—
  - (i) not less than ten years before the date upon which the donation takes effect; or
  - (ii) before the donor for the first time became ordinarily resident in the Union (in the case of any person other than a company) or was for the first time registered, managed or controlled in the Union (in the case of a company); or
  - (iii) by inheritance;
- (h) by or to any person (including any Government), referred to in paragraph (a), (b), (c), (d), (e) or (o) of sub-section (1) of section ten;
- (i) by or to any institution for the advancement of science or art or of a charitable, educational or ecclesiastical nature, if the Minister of Finance is satisfied that the operations of such institution are in the interest of the public;
- (j) if such property or the income therefrom is required to be devoted wholly to purposes which the Minister of Finance is satisfied are in the interest of the public and which are of a charitable, educational or ecclesiastical nature;
- (k) as a voluntary award the value of which is required to be included in the gross income of the donee in terms of paragraph (b) or (b)bis of the definition of 'gross income' in section seven;
- (l) if such property is so disposed of under any trust for the purpose of revesting the said property in the person by whom such trust was created.

(2) Donations tax shall not be payable in respect of—

- (a) so much of the sum of the values of all casual gifts made by the donor during the period of twelve months ending on the thirty-first day of December of any year as does not exceed two hundred pounds;
- (b) so much of the value of all property disposed of by the donor under a donation on any date to or for the benefit of his children as, together with so much as was exempt from donations tax in terms of this paragraph of the sum of the values of all property disposed of under donations before such date by the donor to or on behalf of his children, does not exceed the sum

arrived at by multiplying the amount of two thousand pounds by the number of children of the donor who are alive on the said date: Provided that for the purposes of this paragraph any child of a deceased child of the donor shall be deemed to be a child of the donor, but if more than one child of any one deceased child is alive on the date referred to in this paragraph the children of that deceased child shall be regarded as a single child of the donor alive as at that date;

- (c) so much of any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable.

Donations by a wife or by a body corporate at the instance of any person.

**54quin.** (1) If any property is disposed of under a donation by a woman married in or out of community of property and not separated from her husband under a judicial order or notarial deed of separation, that property shall for the purposes of this Part be deemed to be disposed of under a donation by her husband: Provided that—

- (i) any tax paid or payable by the husband in respect of any property disposed of under a donation by the wife may be recovered from the assets of the wife;
- (ii) if either the husband or the wife make written application therefor to the Commissioner or the Commissioner considers it desirable, separate payments may be made by, or separate notices of assessment may be sent to, the respective spouses in respect of the property disposed of under any donation by such husband and wife, respectively, but the total amount of such separate payments or the total tax payable in respect of the separate assessments so issued, as the case may be, shall not be less than the total amount of tax which would have been payable by the husband alone if the value of the property disposed of under a donation by the husband and wife together had been assessed as the value of property disposed of under a donation by the husband alone.

(2) If any property is disposed of under any donation by any body corporate at the instance of any person, that property shall for the purposes of this Part be deemed to be disposed of under a donation by that person: Provided that any tax paid or payable by any person in respect of any property so disposed of under a donation by any body corporate may be recovered from the assets of that body corporate.

(3) For the purposes of sub-section (2) property shall be deemed to be disposed of under a donation by any body corporate at the instance of any person if, having regard to the circumstances under which that donation was made by such body corporate, the Commissioner is of the opinion—

- (a) that it was not made in the ordinary course of the normal income earning operations of that body corporate; and
- (b) that the selection of the donee who benefited by the donation was made at the instance of that person.

Property disposed of under certain transactions deemed to have been disposed of under a donation and certain donations deemed to have taken effect after

**54sex.** (1) Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration that property shall for the purposes of this Part be deemed to have been disposed of under a donation: Provided that in the determination of the value of such property a reduction shall be made of an amount equal to the value of the said consideration.

(2) Every donation which is registered or the subject-matter of which is delivered on or after the twenty-fourth day of March, 1955, shall be deemed

the twenty-fourth day of March, 1955.

to have taken effect on or after that date unless it is proved to the satisfaction of the Commissioner that the donation in question actually took effect prior to the said date.

Persons liable for the tax.

**54sept.** The person liable for donations tax shall be the donor: Provided that if the donor fails to pay the tax within the period prescribed in sub-section (1) of section *fifty-four oct* the donor and the donee shall be jointly and severally liable for the tax.

Payment and assessment of the tax.

**54oct.** (1) Donations tax shall be payable within three months or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect and shall be paid to the receiver of revenue for the district within which the donor (in the case of any person other than a company) is ordinarily resident or (in the case of any company) is registered, managed or controlled.

(2) Where a donor has disposed of property under more than one donation in respect of which donations tax is payable the tax payable in respect of each such donation shall be calculated according to the order in which such donations took effect.

(3) Where a donor has disposed of property under more than one donation on the same date those donations shall, for the purpose of determining the tax payable in respect of each donation, be deemed to have taken effect—

- (a) in such order as the donor may elect; or
- (b) if the donor fails to make such an election within fourteen days after having been called upon by the Commissioner to do so, in such order as the Commissioner may determine.

(4) The payment of the tax in terms of sub-section (1) shall be accompanied by a return in such form as may be prescribed by the Commissioner.

(5) The Commissioner may at any time assess either the donor or the donee or both the donor and the donee for the amount of donations tax payable or, where the Commissioner is satisfied that the tax payable under this Part has not been paid in full, for the difference between the amount of the tax payable and the amount paid, but the payment by either of the said parties of the amount payable under such assessment shall discharge the joint obligation.

Certain references to other matters and persons deemed to include references to property disposed of under donations, the value of such property or the person by whom it is disposed of.

**54nov.** For the purposes of donations tax—

- (a) any reference in sub-sections (1) and (2) of section *sixty-two*, paragraphs (c) and (d) of sub-section (1) of section *sixty-three* and paragraphs (a) and (e) of section *sixty-nine* to the income of any person or to the gross income received by or accrued to or in favour of any person shall be deemed to include a reference to property disposed of by any person under a donation, or to the value of such property, as the context may require;
- (b) the reference in sub-section (2) of section *sixty-two* to any person entitled to or in receipt of any income shall be deemed to include a reference to any person who has disposed of property under a donation;
- (c) the reference in section *sixty-four* to the taxable income or income subject to super tax in relation to which any return or information is required shall be deemed to include a reference to the value of any property disposed of under a donation in relation to which the return or information is required;

- (d) the reference in paragraphs (b) and (c) of section *sixty-nine* to the income under the management, disposition or control of an agent or to income the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be;
- (e) the reference in sub-section (1) of section *seventy* to the income to which a representative taxpayer is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control shall be deemed to include a reference to any property disposed of under a donation of which a representative taxpayer in his representative capacity has the management, receipt, disposal, remittance, payment or control, and the reference in the said sub-section to income received by or accruing to or in favour of such a person beneficially shall be deemed to include a reference to property disposed of by such a person in his own right under a donation.

Value of  
property  
disposed of  
under  
donations.

**54dec.** (1) For the purposes of donations tax the value of any property shall be—

- (a) in the case of any fiduciary, usufructuary or other like interest in property, an amount determined by capitalizing at six per centum the annual value of the right of enjoyment of the property over which such interest was or is held, to the extent to which the donee becomes entitled to such right of enjoyment, over the expectation of life of the donor, or if such right of enjoyment is to be held for a lesser period than the life of the donor, over such lesser period;
- (b) in the case of any right to any annuity, an amount equal to the value of the annuity capitalized at six per centum over the expectation of life of the donor, or if such right is to be held by the donee for a lesser period than the life of the donor, over such lesser period;
- (c) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property exceeds the value of such interest, determined—
- (i) in the case of a usufructuary interest, by capitalizing at six per centum the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
- (ii) in the case of an annuity charged upon the property, by capitalizing at six per centum the amount of the annuity over the expectation of life of the person entitled to such annuity, or if it is to be held for a lesser period than the life of such person, over such lesser period; or
- (iii) in the case of any other interest, by capitalizing at six per centum such amount as the

Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or if such interest is to be held for a lesser period than the life of such person, over such lesser period;

- (d) in the case of any other property, the fair market value of such property as at the date upon which the donation takes effect: Provided that in any case in which, as a result of conditions which in the opinion of the Commissioner were imposed by or at the instance of the donor, the value of any property is reduced in consequence of the donation, the value of such property shall be determined as though the conditions in terms of which the value of the said property is reduced in consequence of the donation, had not been imposed.

(2) For the purposes of paragraphs (a) and (c) of sub-section (1) the annual value of the right of enjoyment of a property means an amount equal to six per centum upon the value of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that—

- (i) where it is established to the satisfaction of the Commissioner that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to six per centum on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraph (a) of sub-section (1) be deemed to be the annual value of the enjoyment of such property;
- (ii) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment shall for the purposes of paragraph (a) of sub-section (1) be deemed to be the average net receipts (if any) derived by the person entitled to such right of enjoyment of such property during the three years immediately preceding the date on which the donation took effect.

(3) Where for the purposes of sub-section (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of fifty years.

(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property is less than the fair market value of such property, he may fix the fair market value of that property, and the value so fixed shall, subject to the provisions of sub-section (6), be deemed for the purposes of this Part to be the fair market value of such property.

(5) In fixing the fair market value of any property in terms of sub-section (4), the Commissioner shall have regard *inter alia* to—

- (a) the municipal or divisional council valuation (if any) of the property concerned;
- (b) any sworn valuation of the property concerned furnished by or on behalf of the donor or the donee;
- (c) any valuation of the property concerned made by any competent and disinterested person appointed by the Commissioner.

(6) The decision of the Commissioner in the exercise of his discretion under sub-section (3) of section *fifty-four quin.*, sub-section (2) of section *fifty-four sex.* or sub-paragraph (iii) of paragraph (c) or the proviso to paragraph (d) of sub-section (1) or sub-section (4) of this section, shall be subject to objection and appeal.

(7) The Governor-general may make regulations as to the valuation of annuities or of fiduciary, usufructuary or other limited interests in property.

Rate of donations tax.

**54undec.** The rate of the donations tax shall be as follows:

Cumulative Taxable Value of Property Disposed of under Donations.	Rate of Tax.
	per centum.
On so much of the cumulative taxable value of property disposed of by the donor under donations—	
as does not exceed £4,000	3
as exceeds £4,000 but does not exceed £5,000	4
“ “ £5,000 “ “ “ “ £6,000	5
“ “ £6,000 “ “ “ “ £7,000	6
“ “ £7,000 “ “ “ “ £8,000	7
“ “ £8,000 “ “ “ “ £9,000	8
“ “ £9,000 “ “ “ “ £10,000	9
“ “ £10,000 “ “ “ “ £11,000	10
“ “ £11,000 “ “ “ “ £12,000	11
“ “ £12,000 “ “ “ “ £13,000	12
“ “ £13,000 “ “ “ “ £14,000	13
“ “ £14,000 “ “ “ “ £16,000	14
“ “ £16,000 “ “ “ “ £18,000	15
“ “ £18,000 “ “ “ “ £20,000	16
“ “ £20,000 “ “ “ “ £22,000	17
“ “ £22,000 “ “ “ “ £24,000	18
“ “ £24,000 “ “ “ “ £26,000	19
“ “ £26,000 “ “ “ “ £28,000	20
“ “ £28,000 “ “ “ “ £30,000	21
“ “ £30,000 “ “ “ “ £35,000	22
“ “ £35,000 “ “ “ “ £40,000	23
“ “ £40,000 “ “ “ “ £45,000	24
“ “ £45,000	25

Date of commencement of Part VI.

**54duoaec.** This Part shall be deemed to have come into operation on the twenty-fourth day of March, 1955.”.

Amendment of section 85 of Act 31 of 1941, as amended by section 18 of Act 34 of 1942 and section 8 of Act 34 of 1953.

**11.** Section *eighty-five* of the principal Act is hereby amended by the addition to sub-section (1) of the following paragraph:

“(c) The Commissioner may institute proceedings for the sequestration of the estate of any taxpayer and shall, for the purposes of such proceedings, be deemed to be the creditor in respect of any tax due by such taxpayer.”.

Amendment of First Schedule to Act 31 of 1941, as amended by section 19 of Act 34 of 1942.

**12.** (1) The First Schedule to the principal Act is hereby amended by the insertion in sub-paragraph (b) of paragraph (4) after the word “amounts” of the words “(excluding such investment income as consists of dividends)”.

(2) The amendment effected by sub-section (1) shall be deemed to have come into operation on the first day of July, 1950.

Amendment of long title of Act 31 of 1941.

**13.** The long title of the principal Act is hereby amended by the substitution for the words “incomes and to consolidate and amend the law relating thereto” of the words “incomes, to consolidate and amend the law relating thereto and to provide for the taxation of donations”.

Amendment of section 2 of Act 34 of 1953.

**14.** Section *two* of the Income Tax Act, 1953 (Act No. 34 of 1953), is hereby amended, with effect from the date of commencement of the said section—

(a) by the addition at the end of paragraph (a) of sub-section (6) of the following proviso:

“Provided that in the event of the death, insolvency or liquidation (in the case of a company) of the person concerned before the issue of such certificate, the Commissioner may instead of issuing such certificate repay to the estate of such person or the company in liquidation the amount paid by the person concerned in respect of any loan portions of the normal and super tax together with interest at the rate of four per centum per annum on each completed one pound of such amount calculated from the date of payment of such amount by such person to the date on which the said amount is repaid by the Commissioner in terms of this proviso.”;

- (b) by the substitution in paragraph (b) of the said sub-section for the words "shall be entitled to a certificate" of the words "or his estate or (in the case of a company) the company in liquidation shall be entitled to a certificate or repayment, as the case may be";
- (c) by the substitution for paragraphs (c) to (e) of the said sub-section of the following paragraphs:
- "(c) A certificate issued in terms of paragraph (a) shall not be transferable and shall, save in such special circumstances and on such conditions as the Governor-General may prescribe, not be redeemable until the expiry of a period of five years from the date of payment of the amount in respect of which such certificate has been issued: Provided that if in the opinion of the Commissioner the circumstances of the case warrant such action he may, subject to such conditions as he may impose, pay the amount due under any certificate to a person other than the person to whom that certificate was issued in terms of paragraph (a).
- (d) Upon expiry of the period referred to in paragraph (c), the relevant certificate shall become redeemable forthwith and may be redeemed in such manner as the Governor-General may prescribe.
- (e) Any such certificate shall bear simple interest at the rate of four per centum per annum for the period referred to in paragraph (c) on each completed one pound of the amount of the loan portion of the normal and super tax in respect of which such certificate has been issued, which interest may be included in the face value of the certificate and shall not be payable before the date on which such certificate is redeemed.
- (e)bis. Where the amount, in respect of which any certificate has, or would but for the proviso to paragraph (a) have been, issued, was paid by instalments, the date of payment of the last of such instalments shall for the purposes of this sub-section be deemed to be the date of payment of that amount.
- (e)ter. Notwithstanding anything to the contrary in any other law contained, no stamp duty shall be payable in respect of any receipt given by any person for the payment to him of any amount in terms of the proviso to paragraph (a) or upon the redemption of any certificate which has been issued in terms of this sub-section."

Persons discharged from liability in respect of unpaid loan portions of normal and super tax unassessed as at 1st July, 1955.

15. Notwithstanding the provisions of sections *one* and *two* of the Income Tax Act, 1953 (Act No. 34 of 1953), no person shall be liable for the payment of any unpaid amount of the loan portions of the normal and super tax referred to in the said section *two* which has not been assessed by the Commissioner at the first day of July, 1955.

Commencement of certain amendments.

16. The amendments effected by section *two*, paragraph (a) of section *four*, paragraph (b) of section *five* and sections *six*, *eight* and *nine* shall first take effect in respect of assessments for the year of assessment ending upon the thirtieth day of June, 1955.

Short title.

17. This Act shall be called the Income Tax Act, 1955.